

FINAL STATEMENT OF REASONS  
DEPARTMENT OF FOOD AND AGRICULTURE  
SUBMISSION OF REGULATIONS PERTAINING TO  
Section 3591.2, Subsection (a)  
Oriental Fruit Fly Eradication Area  
Title 3, California Code of Regulations

Update of Initial Statement of Reasons/Policy Statement Overview

The initial statement of reasons/policy statement overview is still valid.

Summary of and Response to Objections or Comments Regarding the Regulations

Comments were received during the written comment period and during the public hearing. The summary of and response to each objection or comment received during the public hearing and written comment period are as follows:

**PUBLIC HEARING:**

Comment:

It is still unclear to me, and the community, what practical effect this rule change will have on the community, and upon what basis it should be supported or denied by our community. It is being framed as a procedure that will simplify the steps required to undertake future treatments to eradicate the Fruit Fly.

Response:

The Department concurs that some members of the community do not understand the practical effect of the emergency amendment of this regulation. The effect of this action was to establish authority for the State to conduct eradication activities in Santa Barbara County against Oriental fruit fly. For Santa Barbara County, this means that all known hosts that are infested or are exposed to infestation by the Oriental fruit fly are a public nuisance. Additionally, the regulation states the means and methods that may be used in the eradication and control of this pest in Santa Barbara County. The Department would only consider control activities if it became unfeasible to eradicate an incipient infestation of Oriental fruit fly. Which to date has never occurred in California. From a practical standpoint,

functionally, there is no difference whether eradication activities are conducted under an emergency regulation or a “permanent” regulation. Currently the Department is completing its rulemaking activities as required by the California Administrative Procedure Act.

Comment:

The recent applications of Naled, an organophosphate and neurotoxin, over a residential area of Santa Barbara, which included 30 schools and uncounted elder and daycare facilities, was an event of great concern for myself and for my community.

Response:

This comment is outside the scope of this rulemaking. However, the Department understands the concerns of some members of the community. The Department does not concur that “applications are applied over a residential area.” Approximately 600 small gel-like “bait stations” per square mile are applied to selected utility poles and street trees, generally on public right-of-ways. These bait stations contain a small amount of methyl eugenol mixed with dibrom (Naled), in a gel matrix (Minugel)

Comment:

We have, as a community, united to use integrated pest management strategies to maintain our parks, schools, and municipal properties. These freedoms from toxics were hard won, after years of city council meetings and public events.

Response:

This comment is outside the scope of this rulemaking. However, the Department believes the eradication actions against the Oriental fruit fly were entirely consistent with Santa Barbara’s local integrated pest management policies.

Comment:

We understand the need to protect our valuable State agriculture from the threats posed by the Oriental Fruit Fly, but we also understand that there are less hazardous methods of eradication and control that are equally effective than highest hazard Naled.

Response:

The Department concurs with the need to protect the State’s agriculture from Oriental fruit fly. The Department does not concur with the statement, “there are less hazardous methods of eradication and control that are equally effective than highest hazard Naled,” which is outside

the scope of this rulemaking. There is a fundamental difference between eradication and control activities as conducted by the Department. For the Department, implementing control activities would be accepting the presence of Oriental fruit fly in a given area of the State but still trying to mitigate the damage and/or spread of the pest. This regulation does not mandate the use of Naled or any other specific chemical, that is an operational decision made by the program based upon sound science and what has been approved for use by the Environmental Protection Agency and the California Department of Pesticide Regulation. What is approved for use by these agencies is outside the scope of this rulemaking.

Comment:

Being as it is currently under consideration to make Santa Barbara a permanent eradication zone for the Oriental Fruit Fly it seems, therefore, urgent that measures be taken within that eradication zone document to ensure that another event, like the one just experienced in Santa Barbara, with pesticide-related illnesses, disruption of citizens' lives, children held out of school, and protests be avoided. This can be handled by an agreement to use least toxic methods first, as well as thorough public health risk assessments, and a high priority on public notification.

Response:

The Department concurs there should be a high priority on public notification and, to the degree feasible, that its eradication activities minimize the disruption of citizens' lives. The balance of this comment is outside the scope of this rulemaking. However, the Department is not aware of any medically confirmed pesticide-related illnesses that were a result of its eradication program activities conducted in Santa Barbara.

Comment:

It's amazing what can be accomplished with communication. It seems likely that the Oriental Fruit Fly will be an ongoing pest, threatening California agriculture, as it has been for decades. It also seems wise, then, to consider the long-term effects of what will most certainly be an ongoing program affecting residents of the State on into the future.

Response:

The Department concurs with this comment and anticipates there will be future eradication projects that will target the Oriental fruit fly in areas of this State. The Department does not

anticipate a specific ongoing eradication program against the Oriental fruit fly in Santa Barbara County. On November 5, 2006, the Department declared eradication of Oriental fruit fly in Santa Barbara County.

Comment:

Effective alternatives to highest hazard pesticides exist and are available. Their use will only increase the value of State agriculture, as the organic market continues to rise dramatically.

Response:

This comment is outside the scope of this rulemaking which does not deal with “effective alternatives to highest hazard pesticides,” the value of agriculture or the organic market.

Comment:

The community of Santa Barbara is proud to include among us a number of global experts on pesticide alternatives. We would be happy to share any pertinent information with your offices and to act in partnership against the Oriental Fruit Fly.

Response:

This comment is outside the scope of this rulemaking. However, the Department is always open to sound science that still enables the desired program outcome, in this case, eradication of the Oriental fruit fly.

Comment:

So let me just tell you, the concerns are probably a little bit worse than what we've been hearing. For instance, I have an article here that was published recently. The name of the article is "Dichlorvos" and Dichlorvos is the evaporative byproduct of Naled. "Dichlorvos and carcinogenity, a systematic approach to a regulatory decision." So what happened, they started using this in Belgium and at the advice of the Belgium Health Council, they did a systematic review of the evidence in the literature and in expert panels with regards to the possible carcinogenic effects of dichlorvos. Following the evaluation procedure that was used by the Independent Cancer Agency, in Europe, they concluded that Dichlorvos should be classified as a possible carcinogen for man. What's a little bit upsetting is that when they gave it to a U.S. panel, they decided that they couldn't decide whether it was carcinogenic or not, so they downgraded it. So there's issues there. The Europeans did pull it off the market,

I believe, and so they are concerned about it and it's to be considered a carcinogen from their toxicological research. Another article, that came from the Graduate School of Life and Environmental Sciences, at the University of Tsubaky, Japan, by five authors who have got, again, degrees and background in toxicology, and toxicology is the study of certain chemicals on man, and they have an article that just came out, recently, and I have, again, the link to this website, "The Effects of Organophosphate Pesticides Used in China on Various Mammalian Cells."

Response:

This comment is outside the scope of this rulemaking. The Department concurs that some persons have expressed concern about the use of pesticides in the program. However, the Department has conducted extensive environmental review to determine the potential environmental impacts of the program, including preparation of a final environmental impact report for the program. This review determined that the program does not present the risk of causing significant environmental impacts to human health or the environment. In California, evaluation and enforcement of pesticide products is under the jurisdiction of the U.S. Environmental Protection Agency (U.S. EPA) and the California Department of Pesticide Regulation (CDPR). The U.S. EPA and CDPR evaluate pesticides for potential effects on human health prior to registration and require appropriate use restrictions be present on the pesticide label to ensure a reasonable certainty of no harm to human health and the environment. The Department is obligated to adhere to the program as certified by the Secretary of Resources. Federal and state regulations impose requirements on the registration and use of pesticides; federal, state, and local agencies enforce these requirements. The U.S. EPA regulates pesticides under three major statutes: the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Food Quality Protection Act (FQPA). FIFRA requires that pesticides be registered before they can be sold or distributed for use in the United States. The FQPA was signed in 1996 to amend both FIFRA and FFDCA and to strengthen the U.S. pesticide regulatory system. FQPA requirements include a new safety standard - reasonable certainty of no harm - that must be applied to all pesticides used on foods. The U.S. EPA requires extensive data as part of its pesticide review and approval process, requiring more than 120 studies before granting a registration for most pesticides used in food production. California state programs closely parallel federal programs; however, California's data requirements are

stricter than those of the federal government. Comments concerning decisions of those agencies as to adequacy of the established limits are outside the scope of this rulemaking. The balance of this comment is outside the scope of this rulemaking.

Comment:

And, furthermore, if you use the term "Eradicate the Fruit Fly," why do you have to keep on using it if it's eradicated. You're not eradicating it, not unless you eradicate it, okay. So by completely reapplying it every single year, you're lying to us, you're not eradicating it, you're trying to control it.

Response:

The Department does not concur with this comment. On November 5, 2006, the Department declared eradication of Oriental fruit fly in Santa Barbara County. The Department will continue to deploy detection traps for Oriental fruit fly in Santa Barbara County, as authorized by this regulation, but would not be applying any treatments unless another incipient infestation was subsequently detected.

Comment:

My office has received numerous complaints from Santa Barbara residents regarding the lack of notification. The community would like to be clearly notified by the responsible agency, via ads and newspapers, or direct notification of residents in the affected area about all issues and actions relating to the Oriental Fruit Fly, and the State's actions in our community. County Agricultural Commissioner Bill Gillette, and I, have repeatedly communicated to CDFA management the need for improved notification procedures to impacted local communities. We have each sent letters to CDFA, outlining the community's concerns and areas where improvement is needed. I respectfully request that CDFA review and revise its notification rules to include a higher degree of collaboration, visibility, and communication regarding issues that are a concern to the public statewide, and not just in Santa Barbara. The State should work with local jurisdictions to get the word out to affected residents.

Response:

This rulemaking did not include any specific "notification rules." The Department believes this comment pertains to the program's operational activities within the affected area and is related to the program's use of pesticides. If this is the case, this comment is outside the

scope of this rulemaking. The Department is obligated to comply with the notification requirements established by other agencies that are applicable to pesticide use. If this comment pertains to the notification requirements contained in the California Administrative Procedure Act (APA), the Department has complied with those requirements. Any request to revise such notification requirements contained in the APA is outside the scope of this rulemaking. However, the Department does concur it should work, and has worked, with local jurisdictions to get the “word” out to affected residents regarding its operational activities and is always interested in feasible ways to improve this activity.

Comment:

It should not fall solely to the local agencies to provide clear and easily found public notification on issues for which they have no jurisdictional authority. This is the responsibility of CDFA, and your noticing rules should be changed to reflect that fact. The problem is, is that the community wants changes made operationally at CDFA, and how they carry out the treatments, and is reluctant to support rule changes that may make the treatments easier for CDFA, without working closely with the residents to avoid future problems. Please clarify exactly what difference this rule change makes in terms of procedures, local notification, and local action.

Response:

This comment is outside the scope of this rulemaking which does not specify the program’s operations related to treatments and “noticing rules.” This rulemaking does not deal with any procedures, local notification or local action and does not make any changes these. However, the Department concurs it should not fall solely to the local agencies to provide public notification. If an infestation is determined to exist, the program current operations regarding notification of eradication project activities are: 1) If treatment of a private property is required, the program notifies the owner 24 hours after notification begins treatment. 2) A Proclamation of Eradication Program (PEP) describing the eradication project is prepared and distributed by fax to the affected County Agricultural Commissioner, County Board of Supervisors and mayors, the California Department of Pesticide Regulation and California Department of Health Services. The Department calls or hand delivers the PEP to the affected Senate and Assembly members. The PEP is also published in a local newspaper

(legal notice section). The Department's website also contains information on all eradication projects occurring throughout the State.

Comment:

As this is an administrative meeting, the town hall meeting is the best opportunity for the community to provide input and to dialogue directly with the CDFA on substantive procedures and actual operational changes. I invite all interested persons to come and discuss their concerns on November 13th, at 7:00 p.m. Our goal, should this situation ever occur again, is to work with CDFA in a collaborative and constructive way, and to make positive changes in the way the Agency does business in our community.

Response:

The Department concurs with this comment.

Comment:

First, the law states that once the boundaries are set forth, the CDFA must state the name of the pest, its host, and the methods to be used to eradicate the pest. In reviewing the letter from the CDFA, entitled "Proposed Changes in the Regulations," the CDFA does mention the pest, but it does not discuss the method used to eradicate it. There are others here, today, who can speak to this issue of the best and least toxic methods for eradication, but I feel that you must follow the regulations by informing the public of what method you intend to use.

Response:

The Department does not concur with this comment. This regulation states that all known hosts that are infested or are exposed to infestation by the Oriental fruit fly are a public nuisance and that the following means and methods may be used in the eradication or control of this pest in Santa Barbara County:

- A. The use of insecticides, chemicals, or other materials as spray, dust, bait, or in any other manner as often as necessary to effect eradication;
- B. The search for all stages of Oriental fruit fly by visual inspection, the use of traps, or any other means;
- C. The removal and destruction of abandoned or unwanted plants bearing or capable of bearing hosts;



- D. The importation, rearing, liberation, and fostering of parasites and predators which attack Oriental fruit fly; and,
- E. The importation, rearing, or liberation of sterile forms of the Oriental fruit fly.

The balance of this comment is outside the scope of this rulemaking.

Comment:

In this same document, which defends the need for the eradication area, it states that the fruit fly, which may have already been moved from the infested area to another portion of the county, and flies, which may have already spread naturally from the infested area, may have already resulted in small infestations outside of the known infested area. If this could be the case, why wouldn't you also find our adjoining counties, such as Ventura and San Luis Obispo, part of the eradication zone? Certainly, it is just as conceivable that someone, who may take fruit from where I live, to another area in the county, like Summerland, could just as easily take a fruit just a little further south to the County of Ventura. The notion of an eradication area, therefore, seems ludicrous.

Response:

The Department does not concur that the notion of an eradication area is ludicrous. The Department concurs it is conceivable that someone could take infested fruit to another county. If incipient infestations of Oriental fruit fly were subsequently detected in any county that was not already listed under the regulation, the Department would propose an emergency amendment to this regulation based upon those facts that supported it.

Comment:

I would state that making Santa Barbara County an eradication area is even more questionable because we have been led to believe that the summer eradication efforts in Santa Barbara were successful. In a September letter, sent by Susan Rose's office to the Board of Supervisors, there was mentioned that "the same technique was recently used successfully in the Fresno area to treat a related fruit fly species." I ask, why is Fresno County not on the list with Santa Barbara, and seven other counties, who are listed as part of the eradication area?

Response:

The Department does not concur with this comment. On November 5, 2006, the Oriental fruit fly was declared eradicated from Santa Barbara County. Although outside the scope of this rulemaking, the related fruit fly species found in Fresno were peach fruit flies and Fresno County is currently listed under Section 3591.12, Peach Fruit Fly Eradication Area, of the California code of Regulations.

Comment:

I believe there is no reasonable reason to set up this emergency eradication area, except that it gives you authority, as stated in the findings of emergency, to immediately begin treatment activities against the Oriental Fruit Fly.

Response:

The Department concurs that this emergency regulation established authority for it to immediately begin treatment activities against Oriental fruit fly. The Department does not concur with the statement there is no reasonable reason to set up this emergency eradication area. The Department is required to comply with California Rulemaking Law under the Administrative Procedure Act and its related regulations. This regulation was needed to implement, interpret, and/or make specific statutes enforced or administered by this Department that deal with the serious pest threat posed by the Oriental fruit fly. The evidence overwhelmingly supports the conclusion that Oriental fruit fly is a serious threat to California, and that the program and regulations are effective and necessary actions for preventing wide scale damage in the State from this pest.

Comment:

This will most certainly give you the authority to move ahead with eradication efforts, without properly notifying public officials and agencies who, in term, should immediately notify the public.

Response:

The Department does not concur with this comment. This comment addresses program implementation and is outside the scope of this rulemaking. However, the Department has already made it clear that it intends to continue to notify public officials and the public.

Comment:

While I understand the vital importance of insuring the viability of our agricultural industry, it seems equally, if not more important, to provide the public with information about pesticide use in their neighborhoods, as this is a public health and safety issue as well.

Response:

The Department concurs with the need to ensure a vital agricultural industry. The remainder of this comment is outside the scope of this rulemaking.

Comment:

The application of Naled to trees around my home and my son's school was heavily burdensome to me and my family. The CDFA deemed that Naled applications would not be burdensome or costly to private persons. This was not the case for us. No human health assessment has been carried out to test these Naled applications over neighborhoods, as was so freely performed on our neighborhood by the CDFA. If anymore fruit flies are found in our neighborhood, we ask that the CDFA be prepared with a less toxic means of treating the infestation, because the cost, burden, and potential harm of Naled treatments is not acceptable.

Response:

The Department is still not aware of any costs that a private person would have to incur to be in compliance with the regulation. The remainder of this comment is outside the scope of this rulemaking.

Comment:

I'm a member of PAAC, Pesticide Awareness, an Alternative Coalition. I joined PAAC about a year ago because I'm very concerned about what goes into my mouth, my food, my environment, and my ocean. These days I can't even eat fish without worrying if it's going to harm me or not, and I don't even go swimming anymore because of all the pollutants, which includes a lot of farm runoff. Everything ends up in the ocean. So I know that you can find out all the statistics about how the type of pollutants, and how much, and so forth, and so on, but I recently read a press releases, one of your own offices, of the Department of Pesticide Regulation. I'm not sure if that's yours, exactly. But it's released from Sacramento. "The California Department of Pesticide Regulation today reported a small increase in pounds of

pesticides applied in 2004, but that included a dramatic rise in the use of some nature-friendly chemicals," which is what I'm hoping for more of. "Commercial pesticide use increased from 175 million pounds in 2003 to 180 million pounds in 2004." So we're increasing. But the point is that, you know, I'm looking at these thousands of pounds that are dumped on our soils, you know, every year, and they're going to end up into our groundwater, and they're going to end up in our streams, and they're going to end up eventually in our oceans, and in our animals that we eat. And, of course, not to mention the vegetables, also, that we consume. And I would hope that you adhere to your own recommendations, which include more IPM research. This is again from the press release, that I caught off the internet. "The recommendations include more IPM research, as well as public, private cooperative efforts that offer strong and positive incentives to industry." And I've been reading, doing a lot of research about the effects of these pesticides, and I'm going to simply quote from a report that was created for Ventura, and I'm just going to -- one paragraph, because you're probably going to hear this again and again. But it says: "Pesticides can cause both short- and long-term adverse health effects. Immediate health effects include blindness, blisters, diarrhea, dizziness, nausea, rashes, stinging eyes, and death. Long-term, chronic adverse health effects can occur months or years after initial exposure and these include birth defects, cancers, and developmental and neurological damage. In addition, pesticides can poison and disrupt immune systems and endocrine systems. A damaged or compromised immune system limits one's ability to fight infections and diseases. The degradation of the human immune system may indeed be the most significant health effect caused by contact with toxic chemicals in the environment." So I want to leave it at that.

Response:

This comment is outside the scope of this rulemaking.

Comment:

Again, I know the residents of Santa Barbara, they love living here, and many of my friends, and people I talk to on a daily basis, and I spend a lot of time handing out notices and fliers at places like the Farmer's Market, and Lazy Acres Market alerting people. That's what PAAC does, we raise awareness about pesticides. And unanimously people tell me what a good thing we're doing and that we want to become more of a green city here. And I know there's a big movement around the country to become a green city -- or to have more and more

green cities. And I just hope that your own agency really acknowledges that and takes that seriously because it affects everyone's health, and health costs are -- you know, they're out of hand, as we speak.

Response:

This comment is outside the scope of this rulemaking.

Comment:

Thank you for the opportunity to have this public hearing, although I must say I would have preferred it if it hadn't been on Halloween, because so many people who wished to attend, participate by attending, were not and are not able to attend.

Response:

The first requests received by the Department for a public hearing pertaining to this issue had wanted the public hearing held "well in advance" of October 30, 2006. The Department arranged for the public hearing on October 31, 2006 in an effort to accommodate these requests. After the Department distributed the "Notice of Public Hearing" it was informed that some members of the community may not be able to attend. The Department assured those sharing this concern that equal weight was given to verbal or written comments and provided guidance on how to comment on the regulation. During this period, the Department and community leaders were also trying to arrange a "Town Hall" informational meeting that was being scheduled for November 13, 2006 and its purpose was to afford the opportunity to more freely exchange ideas and information with the affected community. There appeared to be some confusion regarding the purpose of the "Public Hearing" and the "Town Hall" informational meeting with some parties wondering who would be on the discussion panels of the "Public Hearing." Some members of the community referred to the "Town Hall" informational meeting as a "regulatory meeting" in their comments. To avoid any further confusion, the Department elected not to change the original date of the "Public Hearing." The Department noted that approximately the same number of community participants were at the public hearing held on October 31, 2006 and at the community meeting held on November 13, 2006.

Comment:

So there have been some serious problems that have arisen as a result of the Naled applications in Santa Barbara. As a result, we are asking that you, number one, don't have a permanent eradication program. And if the need is so great that we have it, I ask that all of the safeguards be employed so that the people are protected, as well. So that you amend the proposed permanent eradication zone plan for Santa Barbara to give consideration to the various omissions, inconsistencies, and misinformation that had proved to be of the greatest public burden. And that is when combating Oriental Fruit Flies, Med Flies, Gypsy Moths, and other pests to agriculture the community requests that proper, prior notification be sent to them, and their elected officials, of any contemplated eradication effort.

Response:

The Department concurs there is no need for a permanent eradication program for Oriental fruit fly in Santa Barbara County. Oriental fruit fly was eradicated from Santa Barbara County on November 5, 2006. The Department concurs that communities and their elected officials are to be given prior notification of eradication projects and it has done so. The remainder of this comment is outside the scope of this rulemaking. If this comment is directed towards the specific amendment of the regulation, the addition of Santa Barbara County, the Department does not concur with it. This regulation also provides the Department with authority to "The search for all stages of Oriental fruit fly by visual inspection, the use of traps, or any other means." As Oriental fruit flies were detected in Santa Barbara County, there was a pest introduction pathway and the Department does not know if that pathway is now closed. Therefore, the Department would be remiss not to continue its detection efforts for Oriental fruit fly in Santa Barbara County and the Department does not consider this activity to be an "eradication program."

Comment:

That no organophosphate, or other harmful to humans substance be used. There are verified superior alternative -- environmentally superior alternatives. Recently, the spraying of trees by the CDFA with Spinosad, in the eradication process in Hollywood, elucidates that fact. The trees there were sprayed with Spinosad and I'm presuming it was effective. That the CDFA follow its own protocol by using the least burdensome to the public materials when combating agricultural pests.

Response:

The Department does not concur with this comment which is outside the scope of this rulemaking. The Department has not sprayed trees with Spinosad as an “eradication process” in Hollywood. The Department assisted a researcher working on a Spinosad bait station application delivery method to test the "hydrodynamic" compatibility of a test matrix mixture with existing program equipment. This was to help ensure the program has compatible application equipment ready in the event that Spinosad becomes a viable alternative to use in a male annihilation technique eradication project.

Comment:

That the CDFA ascribe to its own mission statement. That mission statement says that the CDFA will use good environmental stewardship. That's really all what we're asking for, good environmental stewardship. That there be transparency in the whole eradication process prior, and during, and with meaningful communication with the public.

Response:

The Department concurs with this comment.

Comment:

That if the CDFA advises the community to see their physician if illness occurs due to presumed pesticide exposure, that the CDFA will have also, previously, informed the community's physicians and hospital staff to the full and complete risk of Naled, and other organic phosphates and category one and two pesticides.

Response:

This comment is outside the scope of this rulemaking.

Comment:

We ask that they inform them of the complete risk of Naled and its symptoms, its risks, and its treatment. Since physicians are not toxicologists, by and large, there is little or no understanding of the symptoms related to pesticide poisoning, nor its treatment. Evidence has shown that there is little or no experienced diagnostic understanding of symptoms or treatment by physicians in hospital emergency rooms, as related to Naled, or other organophosphates, and also not by the hospital's own toxicology or pathology department, or

labs, as well. I mean, it was incredible, people went to their doctors, they went to emergency, and no one knew what to do or even what it was. So this, organophosphates, as well as other pesticides can resemble other symptoms, but they are in a class of their own. That in the public interest the Ag Department give serious consideration, with meaningful attention and aid to the great number of residents' costs to them regarding injury and illness that they had felt they had suffered as a result of these toxic applications. This care and concern be in lieu of the past references of the Department that they've had no "proven illness reported to them in the past.

Response:

This comment is outside the scope of this rulemaking.

Comment:

And so people were kind of brushed aside. That there was no proper consideration and concern given to the health and safety of the residents of these communities while the Ag Department was combating fruit flies, that the information given to the public by the CDFA be accurate and truthful.

Response:

The Department does not concur with this comment which is outside the scope of this rulemaking.

Comment:

On the Agricultural Department's statement to the Goleta Water Board, early this month, it was stated that Naled is not volatile. The exact opposite is the truth. The toxic vapors were still present when tested at 25 meters, which is 82 feet from the application site. When measurements concluded -- this is when measurements concluded. If measurements had continued, how far may we have expected to find this poisonous out gassing? The Agricultural Department has said that this dissipates in one or two days. Toxicologists, including the CDFA's own, concluded that the half-life is ten days. There was never mention to the public that the out-gassing, poisonous vapors accelerate and become more omnipresent and volatile as the day heats up. No information was given to the public that as moisture, like drizzle or fog, comes in contact with Dichlorvos, DDVP, it changes to a more



deadly toxin. There was never an acknowledgement of the carcinogenic components of Naled by the CDFA.

Response:

The Department does not concur with this comment which is outside the scope of this rulemaking. However, the Department's Naled study in 1989 for Oriental fruit fly pole treatments had air samplers at 1 meter and 25 meters from treated bait stations and samples collected for 4, 8, and 24 hours on day 0, 1, and 7 after bait station applications. No Naled was detected, methyl eugenol inhalation exposure was minimal because levels during an eradication program are much lower than currently allowed in food additives, the TLV threshold for DDVP is more than four orders of magnitude greater than the highest concentration found in air samples in this study (TLV = Threshold Limit Value = time weighted concentrations to which a person may be exposed for 8 hours per day / 40 hour week with no adverse effects— American Conference of Governmental Industrial Hygienists 1987).

Comment:

Great errors have been made, with no apparent concern relayed to the residents. On many streets, in Hope Branch Annex, virtually every tree, light standard, and telephone pole were inundated with Naled.

Response:

The Department does not concur with this comment which is outside the scope of this rulemaking.

Comment:

That the CDFA, while providing HAZMAT suits for its own applicators, who sat safely in closed and protected truck compartments, failed to similarly advise the public on protective measures to ensure their safety and that of their families. Approximately 600 school children walked through the Hope Branch Annex neighborhoods on their way to register to school on the very day that this highly protected applicator, carefully enclosed in his plasticized vehicle compartment, and with HAZMAT gear protecting him, spread Naled on the very streets that the children walked.

Response:

The Department does not concur with this comment which is outside the scope of this rulemaking. However, the Department is required to comply with the pesticide application restrictions established by other agencies.

Comment:

Who will monitor these families in the future, when possible autism, cancer, and leukemia may become apparent? Who can they turn to? The information that a 4.5 ounce Naled mixture was used per eight square mile application area was false. According to the Agricultural Department representative, three-quarters of a gallon of Naled was used per eight square mile area at each application day.

Response:

This comment is outside the scope of this rulemaking.

Comment:

The CDFA needed to have used a safe alternative, as researched, endorsed, and encouraged by the U.S. Department of Agriculture, the CDFA's oversight department. Their research and collaboration with other governmental bodies, such as AFED, the -- I don't have it down here, health and so on. Teresa, you'll tell me what that is -- was extensive and produced in the EIS report of 2001. Spinosad, with beneficial predatory insects was determined to be just as effective as Naled. The difference was that Spinosad, et cetera, was more benign to the environment. It was, and is now, a category three, rather than the category one of Naled and other organophosphates. SureDye is another proven and effective pest eradication product. The CDFA, as I mentioned, just last month used it.

Response:

The Department does not concur with this comment which is outside the scope of this rulemaking. The use of Spinosad and Suredye have not been demonstrated as effective for eradicating the Oriental fruit fly as using Naled and methyl eugenol in the male annihilation technique. SureDye is a photoactive chemical dye tested in the late 1980's through the mid 1990's as a replacement for malathion in protein bait sprays that were applied by air. It must be ingested and the insect subsequently exposed to sunlight to be effective. Currently it is not registered for fruit fly control by the U.S. Environmental Protection Agency; nor registered

as an insecticide by the California Department of Pesticide Regulation; and, it is not used for fruit fly control anywhere in the world. Therefore, the Department has not used it in the last month. Spinosad is an insecticide developed in the 1990's that contains metabolites of a soil bacterium that are toxic to insects. It can kill insects through contact and ingestion, but it is five to ten times more effective if ingested. Spinosad is not compatible with the program's current male annihilation technique spray technology because it degrades within about a week, while the lure remains effective for at least two weeks. Spinosad is used for fruit fly control worldwide when combined with a protein hydrolysate bait and applied by ground or air over a given area. Research is under way to formulate a sprayable mixture of methyl eugenol and a different matrix but the research has not been completed.

Comment:

It was incredible to me that the only notice given of the CDFA's plan to make Santa Barbara's permanent eradication zone was given via an inter-agency notification and not to the public. To uncomplicate matters, there are simple solutions. Keep the public fully informed, do the right thing via notification on all aspects of CDFA's decisions and proposals when it might potentially affect the public. Be transparent in all noticing to the public.

Response:

The Department does not concur with this comment. The "Notice" and the "Notice of Public Hearing" were mailed to: Brian Barnwell, Grant House and Das Williams, all Santa Barbara City Council Members; Susan Epstein, Goleta School Board Trustee; the Santa Barbara County Board of Supervisors; Mayor Jonny Wallis, Goleta; Mayor Marty Blum, Santa Barbara; The Honorable Tom Mcclintock, Member of the Senate; and, The Honorable Pedro Nava, Member of the Assembly. The "Notice" and the "Notice of Public Hearing" were also mailed to all residents that the Department had the complete name and address for and where the Department was aware of their interest in this issue. The Department mailed the notice of proposed changes to this regulation to all known interested parties on September 13, 2006. The notice was also published in the California Regulatory Notice Register on September 15, 2006. On October 11, 2006, the Department subsequently mailed the "NOTICE OF PUBLIC HEARING CONCERNING PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF FOOD AND AGRICULTURE Pertaining to the Oriental Fruit Fly Eradication Area," to all known interested parties. The Department received

one letter that was signed by multiple individuals with one “in care of” recipient and return address. The Department mailed both the “Notice” and the “Notice of Hearing” to the “in care of” address and recipient. The Department also emailed the “Notice of Hearing” to all those who requested it via email. The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/cdfa.pendingregs](http://www.cdfa.ca.gov/cdfa.pendingregs)).

Comment:

An advisory board, comprised of the Department of Agriculture staff, IPM experts, and a community member component is strongly urged and requested for the future. This advisory committee would act to support the CDFA and local Agricultural Department with expanded information, and to act in tandem as another community liaison. Apparently, we can't have too many. The advisory committee would act as an ombudsman to provide the community with the info and assistance needed to coexist well with the CDFA in an eradication program. The advisory board approach worked successfully in many jurisdictions across the county. The time, and energy, and the funds that would be conserved would more than justify its existence, and the public good will that it would produce is inestimable

Response:

This comment is outside the scope of this rulemaking.

Comment:

And lastly, consider not doing only the minimum required in terms of noticing the public. Rather, consider the public as you would your own families, by including them in the process and protecting them with the same zeal and diligence that is extended in combating the agricultural pests.

Response:

The Department concurs with this comment.

Comment:

I am concerned that through the promulgation of Santa Barbara County has a permanent eradication zone that local requests to the CDFA for greater public notice are being answered by doing the exact opposite, reducing the CDFA's level of accountability to the local

community. It has always been my desire, in correspondence with your Agency, to have a true community dialogue concerning Naled and possible alternatives.

Response:

The Department does not concur with this comment. The Department has provided public notice and participated in community meetings, the last one was on November 13, 2006, in Santa Barbara, on a date and time requested by community leaders. Additionally, although outside the scope of this rulemaking, there has been dialogue with the community concerning Naled and possible alternatives. At this time the Department believes the program's operational procedures are safe and it is not aware of any "safer" methods that can be used to eradicate Oriental fruit fly which would be effective and are registered for such use in California.

Comment:

I am disappointed that despite the fact that this hearing was requested by three City Council members, you have chosen a hearing time during a regularly scheduled Council meeting, on a day when fewer community members are likely to come. It seems that a true community dialogue is less than forthcoming.

Response:

The Department does not concur with this comment. The first requests received by the Department for a public hearing pertaining to this issue had wanted the public hearing held "well in advance" of October 30, 2006. The Department arranged for the public hearing on October 31, 2006 in an effort to accommodate these requests. After the Department distributed the "Notice of Public Hearing" it was informed that this was at a time of a regularly scheduled Council meeting. The Department and community leaders were also trying to arrange a "Town Hall" informational meeting that was being scheduled for November 13, 2006 and its purpose was to afford the opportunity to more freely exchange ideas and information with the affected community. At the request of members of the community, this meeting was scheduled from 7-9 PM but actually lasted from 7-10 PM in order to afford a reasonable time for all to participate. There appeared to be some confusion regarding the purpose of the "Public Hearing" and the "Town Hall" informational meeting with some parties wondering who would be on the discussion panels of the "Public Hearing." To avoid any further confusion, the Department elected not to change the original date of the "Public

Hearing.” Additionally, approximately the same numbers of community participants were at the public hearing held on October 31, 2006 and at the “Town Hall” informational meeting held on November 13, 2006.

Comment:

I believe that even if you are to reject alternatives, the basic responsibility the State should have to us is adequate public notice. Though the California Code of Regulations, Section 5773, states that 'all residences should be notified in the application area for aerial spraying,' I believe this should be for all applications of pesticides that are conducted in urban areas and that this be a condition placed on the amendment currently being considered. Actually, there is a regulation that states even when not aerial sprayed that there be a 24-hour notice given to every resident.

Response:

The Department concurs that adequate public notice should be given. The remainder of this comment is outside the scope of this rulemaking.

Comment:

The State's use of pesticides, as in the recent fruit fly eradication program, appears inconsistent with and may be detrimental to our citywide efforts to eliminate pesticides from the local environment.

Response:

This comment is outside the scope of this rulemaking.

Comment:

I request that you amend your proposed permanent eradication plan for our area to include consideration for the health of the public. I ask that our City Council and staff be given advance notice of State decisions that may affect public health in and around the City.

Response:

This comment is outside the scope of this rulemaking. However, the Department does consider the health of the public.

Comment:

I also request that the public be notified in advance of any future applications of pesticides so that they may make their concerns heard and, if necessary, take any precautionary measures to protect themselves.

Response:

This comment is outside the scope of this rulemaking. However, if and when pesticides are used, it will be done in full accordance with pesticide laws and regulations. In some cases materials may be used under special registrations or exemptions, but this is permissible and does not represent a circumvention of the pesticide regulatory process. Any treatments performed will be in accordance with all applicable laws, regulations, and use restrictions.

Comment:

There was one thing that I forgot to mention, and that is in the regulations it does state that no homeowner may use Naled, nor any professional hired by a homeowner.

Response:

This comment is outside the scope of this rulemaking.

Comment:

And also want to mention that this notice that we were to be given was in the California Regulatory Notice Registry, and I looked it up on the internet and I saw the notice, but it said there would be no notice of a hearing. There is no notice, unless someone requested it. But post that notice, there has been no notice of this hearing. I did see, in your Public Hearing Notice Booklet, here, that quite a few people have been contacted, but most of the -- all, but 15 people, are out of Santa Barbara, Goleta area. There's only 15 people that were actually, I think, notified, and I don't know if it's by phone, or by e-mail, or by letter, but only 15 people in Santa Barbara were actually alerted to this public hearing. And I'm not sure, but I really believe that if there wasn't notification in the newspaper, radio, and television, that the next time there ought to be that kind of notification. And I wonder about, even, almost the legitimacy of this meeting because of the lack of notice to the public.

Response:

The Department does not concur with this comment. The Department is required to comply with California Rulemaking Law under the Administrative Procedure Act and its related

regulations. The “Notice” and the “Notice of Public Hearing” were mailed to: Brian Barnwell, Grant House and Das Williams, all Santa Barbara City Council Members; Susan Epstein, Goleta School Board Trustee; the Santa Barbara County Board of Supervisors; Mayor Jonny Wallis, Goleta; Mayor Marty Blum, Santa Barbara; The Honorable Tom Mcclintock, Member of the Senate; and, The Honorable Pedro Nava, Member of the Assembly. The “Notice” and the “Notice of Public Hearing” were also mailed to all residents that the Department had the complete name and address for and where the Department was aware of their interest in this issue. The Department mailed the notice of proposed changes to this regulation to all known interested parties on September 13, 2006. The notice was also published in the California Register on September 15, 2006. On October 11, 2006, the Department subsequently mailed the “NOTICE OF PUBLIC HEARING CONCERNING PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF FOOD AND AGRICULTURE Pertaining to the Oriental Fruit Fly Eradication Area,” to all known interested parties. The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdffa.ca.gov/cdfa.pendingregs](http://www.cdffa.ca.gov/cdfa.pendingregs)). The remainder of this comment is outside the scope of this rulemaking.

Comment:

I'm asking that you ensure that the addition of Santa Barbara to the eradication program, by the means of the amendment to the regulations include, first, a requirement to use lower toxicity materials.

Response:

The Department does not concur with this comment.

Comment:

Second, a requirement to conduct a quantitative risk analysis of the health effects of the program and, third, a requirement to provide appropriate notification to residents.

Response:

This comment is outside the scope of this rulemaking.



Comment:

After the alternative section of the regulations, I believe there are alternatives which should be as -- I'm sorry, there are alternatives which will be as effective and less burdensome to affect private persons, than the proposed actions. The effectiveness of alternatives have been demonstrated by the CDFA, itself, throughout the use of spinosad as a fruit fly bait throughout -- although the formulation or application throughout may be different than current practices, the material's effectiveness has been well demonstrated by CDFA, itself, and through other sciences.

Response:

The Department does not concur with this comment which is outside the scope of this rulemaking. The use of spinosad is not compatible with the program's current male annihilation technique spray technology because it degrades within about a week, while the lure remains effective for at least two weeks. Spinosad is used for fruit fly control worldwide when combined with a protein hydrolysate bait. Spinosad is being tested in Hawaii in a sprayable mixture of methyl eugenol and a different matrix. Preliminary results are promising, but testing is not complete and the final decision on its effectiveness is probably a year away.

Comment:

There are other materials, like SureDye, for example, which may prove to be equally effective. These materials need to receive higher priority in the process, and the development of these alternatives should be a condition placed on the amendment being considered.

Response:

The Department does not concur with this comment which is outside the scope of this rulemaking. SureDye is not registered for fruit fly control by the U.S. Environmental Protection Agency. It is also not registered as an insecticide by the California Department of Pesticide Regulation. Additionally, it currently is not used for fruit fly control anywhere in the world. There are two major drawbacks to the use of SureDye; 1) Wood and other porous surfaces to which it is applied are stained red; and, 2). Its effectiveness degrades very rapidly (within hours) when exposed to sunlight.

Comment:

Notification was not conducted during the recent program in Santa Barbara until well into the program. Many residences awoke to find out that their trees have been sprayed, materials have been applied on their property, without their knowledge, and that they or their children were suffering possible health effects.

Response:

The Department does not concur with this comment which is outside the scope of this rulemaking.

Comment:

Notification of residents is good practice, particularly as up to 5,000 applications of the gel-like material are being applied on a dense, urban residential area. Notification will allow for residences to take appropriate steps to protect their health, such as closing windows, preventing children from playing outside during or immediately after applications, et cetera.

Response:

This comment is outside the scope of this rulemaking.

Comment:

The EIR, conducted in 1993, states that "as a matter of policy, notifying residences should be conducted," and this is listed as a mitigation measure in the EIR. The California Code of Regulations, Section 5773, states that "all residences should be notified in the application area for aerial spraying applications, only." However, I believe this should be for all applications of pesticides that are conducted in urban areas and that this should be a condition placed on the amendment currently being considered.

Response:

This comment is outside the scope of this rulemaking. Any pesticides used by the Department are used in compliance with the applicable label and existing laws and/or regulations, including those applying to "notification." Comments regarding the EIR are outside the scope of this rulemaking.

Comment:

And I think what's been shown here today, as well as what was shown at a hearing that took place here, a couple months ago, in front of the Board of Supervisors, is that by and large people understand the need to control the fruit fly. I think people understand that agriculture is our number one industry and it's our most important economic engine here, in Santa Barbara County. And if this regulation, or this change to the regulation is going to allow us to continue farming and support our agriculture, then I think generally people would support that.

Response:

The Department acknowledges and appreciates such support.

Comment:

What people are not going to support, as you've heard, is a change in this regulation or addition to this regulation that would enable it to happen as it happened a couple of months ago, and that's where the concerns are coming from. Those concerns, I think, mainly can be summarized as notification and a look at the viable alternatives. Those are the two key areas that we keep hearing today,

Response:

The Department complied with the notification requirements contained within the California Administrative Procedure Act. Other notification issues and evaluating viable alternatives are outside the scope of this rulemaking. However, the Department concurs that if potential viable alternatives are available they should be fully evaluated.

Comment:

Those provisions being better notification, and not just to the County Agricultural Commissioner, but to other agencies, and other healthcare providers, and other nonprofit organizations and, as you've heard, residences near the areas to be treated.

Response:

This comment is outside the scope of this rulemaking.

Comment:

You've heard various mentions here, today, and on page four of this documents it says "alternatives considered," and it talks a little bit about finding that no alternative considered would be more effective. I think many people are under the impression, and it has been shown that alternatives weren't considered as much as they could have been. And, as many people know, there's just not a lot of research, funding, or support for alternatives in our local -- or not our local, but in our existing government. And that's something that we really need to support, but I think that's something that the Department of Food and Ag really needs to take to heart when you guys are making these decisions, especially in areas where there's residences and schools.

Response:

The Department has found that no other alternative to the regulation would be more effective and that is a different issue than available alternatives to the program's operations and what materials may or may not be used during eradication activities. The balance of the comment is outside the scope of this rulemaking.

Comment:

But I think it's really important, as many people have mentioned, open dialogue, communication, especially in a City that prides itself for being very health and environmentally conscious. That's not to say we shouldn't have the same considerations for other communities and other counties that are dealing with this same issue.

Response:

The Department concurs with this comment.

Comment:

Jim Heitz was not able to be here today, he's a Professor Emeritus of Biochemistry and Molecular Biology at Mississippi State University. He understands that California recently suffered an outbreak of Oriental Fruit Fly and has treated this problem with Naled, an organophosphate nerve poison, in conjunction with methyl eugenol, an attractant. He understands that the CDFA is unaware of any comparable active ingredient to control the Oriental Fruit Fly. He would like to inform you of an active ingredient that is quite effective against the fruit fly, in general. Phloxine B is a phosphorescent red dye used in foods and

cosmetics for humans that is also active as an insecticide. It is safe for humans and kills insects due to the biochemical and physiological differences between the two. He co-edited this book, titled "Light Activated Pest Control," and you can find it at any university. This one is actually from UCSB, with Dr. Kelsey Downum, of Florida International University, which was the results of an American Chemical Society Symposium held in Anaheim, California, in 1995. In this book there are two chapters by Liquido, McQuate, and Cunningham, from the ARS Lab in Hilo, Hawaii, and two chapters by Mangan and Moreno, from the ARS Lab in Weslaco, Texas, describing treatments of various fruit flies using these dyes. Also in the book is a chapter by Bergsten, from the ARS in Beltsville, MD, on the safety, and one by Bergsten, of the FDA in Washington, DC, on the safety from the FDA's perspective. Field trials have been done under the auspices of the USDA in Hawaii, California, Guatemala, Texas, and Florida. He, personally, was present at the trials in California and Florida. The dyes were very comparable to organophosphate nerve poisons in all of these trials. Phloxine B is known by the FDA as D&C Red Number 27 and 28. On page 7 of his chapter, which I will try to get a copy to you, in the above-referenced book, he shows the calculations that indicate that Phloxine B is 100,000 times safer than Malathion. The coloring agent in Pepto Bismol has Phloxine B. You will consume more Phloxine B in one tablespoon of Pepto Bismol than all the oranges you can eat from an orchard sprayed by the Mesotherm-Phloxine B bait. So, essentially, one teaspoon of Phloxine B in Pepto Bismol will spray an orchard and take care of the Oriental Fruit Fly, eradicate it. He would be most happy to talk to anyone about the dye approach to insect control. But it appears that the regulatory agencies charged with protecting the agricultural sector are quite happy with the organophosphate nerve poisons. That sets up a classic "Cath-22," nothing new is available because nothing new is developed.

Response:

This comment is outside the scope of this rulemaking.

Comment:

However, more consideration and resources should be given to protecting public health in urban areas, particularly when less toxic methods are currently and equally effective and are available.

Response:

This comment is outside the scope of this rulemaking.

Comment:

It is unfortunate that every time a new fruit fly introduction appears the regulatory agents trot out an organophosphate because there is nothing else to use, and citizenry gets upset because they don't want to be sprayed with that material. It would be great if both sides got together during an off season, like now, when no outbreak is evident, in order to develop a new approach. If not Phloxine B, then try Spinosad, or parasitic wasps, or something else. But don't wait four years or more to go through this all over again. And this could be much sooner than four years.

Response:

This comment is outside the scope of this rulemaking.

Comment:

I would like to demonstrate that the proposed amendment by the Department of Food and Agriculture does not demonstrate that the less burdensome and as effective alternatives to affected private persons have been considered. Research has demonstrated that safer alternatives, like SureDye and Spinosad, both of which the USDA, ARS and others have proved to be as effective for eradication on Oriental Fruit Flies. They have been documented for decades as safer alternatives, but have rarely ever been used. Additionally, more attention needs to be placed on the use of parasitic wasps in conjunction with SureDye and Spinosad. The direction of eradication needs to change from the use of one highly toxic neurotoxin, Naled, to the use of multiple safer products like SureDye, Spinosad, and parasitic wasps. It would appear that the United States has become complacent for the past 32 years -- I'll repeat that, 32 years -- on the use of the Class 1, organophosphate, neurotoxin Naled, because it works for the fruit fly. However, it is highly toxic for humans and the environment. I already talked about SureDye. Dr. Heitz developed the environmentally safe product SureDye. Suredye is a mixture of Red Dye 28 and Yellow Dye 8. Both of which are xanthene dyes registered for use as color additives in drugs and cosmetics. Food and Drug Administrative red dye has been consumed by humans for the past 70 plus years. It's a new way of treating insects. Back in '95, when he developed it, I believe the inception was actually 1928 of using dyes for insecticidal approach. So the information has been available for over 70 years. So, yes, there are safer alternatives. And the wonderful thing about SureDye is it's proved to be highly toxic to fruit flies. It has shown up to a hundred percent of

fruit fly pests in labs -- it has been shown to kill up to a hundred percent of fruit fly pests in labs and field tests led by the Agricultural Research Service and its governing bodies, the United States Department of Agriculture in Weslaco, Texas, and colleagues in Hilo, Hawaii. So it's apparent that the USDA, the CDFA is very aware of these products and for some reason they aren't being applied. So my question is why? PhotoDye and other cooperatives have tested SureDye outdoors in California, Florida, Hawaii, Texas, Brazil, Guatemala, Mexico, Morocco, South African and Surinam. Outdoor trials have been on citrus, mango, and other tropical and subtropical crops. So the field trials have occurred in extensive -- extensive field trials have occurred all around the world. I'm not sure what more research can be done to prove the point, but I would like to really have this product, which is a thousand times less benign than malathion, if I can pronounce that correct, a hundred thousand times less toxic, be considered in this amendment. Insects shown to be susceptible to these dyes are Oriental Fruit Fly. It also will help your Med fly, your Mexican Fruit Fly -- actually, not help, get rid of. West Indian Fruit Fly, serpentine fly, guava fly, common fly, mosquito, yellow fever. I mean, this application can go all the way to Africa and take care of malaria mosquitos. House flies, meal worm, black imported fire ants. Fire ants is becoming another problem. If you go to CDFA's site, you will notice that fire ants are becoming a problem. You know, this product is benign, it's safe -- it's not benign, but it's safer, and it will take care of a lot of problems that CDFA is incurring. Spinosad is a significantly less toxic product to humans than Naled, yet highly toxic to fruit flies and widely used by the agricultural and has been used by CDFA for successful fruit fly eradications. We, the public, understand the concern for protecting the 7.2 billion plus dollars in California, alone. However, if there are safer alternatives, that are just as effective for eradication and can protect California's investment, why not use them? It would appear that no one wants to be responsible for the results so everyone stays on the current path. As long as Naled is made available through an emergency exemption, these safer alternatives will fail to be used. As Dr. James Heitz concludes, we need to work with safer alternatives on the off season, so that when the next outbreak occurs the CDFA has a safer alternative available to use. Currently, the CDFA does not have a backup plan. In reviewing the draft USDA Exotic Fruit Fly Strategic Plan for the next four years, for 2006 to 2010, the treatment introduction of exotic fruit flies is increasing and future outbreaks are expected. This process is dynamic as the increased globalization of transportation industries and the according increased of availability of

affordable travel opens new paths for exotic fruit flies. The following goals are listed by The Animal and Plant Health Inspection Service, APHIS, and are good goals, but some of them may not be realistic. It would appear that they are constantly working against nature instead of with nature. No one organization or country can beat nature. Instead, people have to find a way to work with nature to achieve repeated, successful, and evolving results. As stated before, globalization has made the current practice more difficult, leaving no options but for change. APHIS's goals, like I said they're good, but they need to really incorporate these safe alternatives and work with nature, and have detection and response capabilities and strengthen preventative releases. I think it's very important, the enhancing detection. That's very key, educating people, letting people know that the majority of the time the fruit fly makes it into an area it's because it's carried in, it's not because it's naturally occurring. So education's a big part and we would like to work with CDFA to educate people so that we can avoid infestations. Insure Med Flies don't move north of Chiapas, Mexico. They have been doing this for the past 30 years, trying to keep the fruit flies at bay, so that they don't enter California, and that's why the eradications are so important, so they don't become infested or established in the United States. Those are important. Again, using methods that -- it would appear that Naled, being used for the past 30 years, is eventually not going to work anymore and you will have no option but to use these safe alternatives and go into a more effective eradication method. The continued use of Naled for male annihilation is like a 30-year bad marriage, someone eventually gets hurt. In Santa Barbara County people became ill and long-term effects are unknown for the application which commenced on July 29th. It would appear that until Naled is pulled off the market, CDFA will continue to use this Class 1 organophosphate neurotoxin for male annihilation treatment for Oriental Fruit Fly by means of a Special Local Needs application. Naled-Dibrom Concentrate, EPA 5481048, has not been registered for use for the male annihilation program. The continued use of Dibrom Concentrate during a male annihilation for the past 32 years in the United States, through the application of an SLN, does not imply that the product is safe or that it doesn't pose health concerns to humans. In order to register a product with EPA, the product and the method of application must go through an extensive toxicological testing, which may take years to complete. Since this method of application with Naled has been applied since 1974, why hasn't the manufacturer or CDFA sought out complete registration? I would like a response for that in the Statement of Reasons, Summary and Response to Comments. I request, for the safety



of residential communities, a complete registration of this product and method through EPA for the male annihilation application for its continued use, as opposed to an SLN. If it does not meet EPA registration requirements, then it should not be used. Again, I would like a comment in the Summary of Reasons. No human health assessment study in regards to the risk of fruit fly annihilation methods used in Naled could be found. USDA Studies, 2001, did not examine the quantitative risk assessment of Naled application. US EPA has evaluated the dietary risks of the use of Naled and DDVP in ag sectors, but not in annihilation programs. Based on the DPR and CDFA studies referenced below, I believe there is sufficient evidence to warrant a risk assessment to be conducted. In reviewing the CDFA, 1989, while detectable levels of Naled were not encountered, a breakdown product of Naled, DDVP, was detected at least 25 meters from sampling sites, which has been already mentioned, seven days after an application. In fact, DDVP is significantly more toxic than Naled and is one of the materials that the community has expressed concern about, actually more so than Naled. DDVP is known by the State of California to cause cancer. DDVP's toxicological screening levels, as defined by DPR, indicate that DDVP is 300 times more toxic than Naled. There is human exposure applied as the product is demonstrated by the USDA -- or sorry, by CDFA and DPR. At the Santa Barbara County Board of Supervisors meeting, held on September 12, 2006, Mr. Guy Tingos, Deputy Agricultural Commissioner with the County of Santa Barbara, stated that no known illnesses have been reported since 1974, by both CDFA and CDPR. In contacting CDPR, I was forwarded cases reported and received by the California Pesticide Illness Surveillance Program from 1992-2004. I have not seen the cases before 1992. What I was able to locate were cases reported from fruit fly programs, which are listed below. All other cases for Naled did not reference fruit fly applications. See attachment. In reviewing all these cases and symptoms were similar to symptoms experienced in Santa Barbara during the eradication. So, in fact, there have been reported cases with fruit fly eradication. Way back in 1992, case number 747, a possible case indicates relationship that indicates that evidence neither supports nor contradicts a relationship. The medical description was breathing difficulty and recurrent dizziness over a period of months. Resident claimed she was exposed to the spray drift from a CDFA crew spraying Naled on the trunk of a tree to control fruit flies. The dizziness appeared later and does not appear to be related, the pesticide was Naled. Another case, 1993, case number 1615, a definite cases. Indicates that both physical and medical evidence document

exposure and consequent health effects, medical description, mild red conjunctiva of both eyes. Worker was spraying ornamentals when the pump on the tank malfunctioned. He removed his goggles to check the pump and the hose blew off the pump and sprayed the pesticide in his face. He washed his face and eyes with water. So that's a concern, there could be malfunction and what happens when there's a malfunction, or if one of the vehicles are in an accident? Then HAZMAT comes in. It's pretty serious when you're dealing with such a toxic product, and no other safe alternative available. Another case, 1997, case number 1281, a possible case indicates relationship that indicates that evidence neither support nor contradicts a relationship. The medical description was dizziness, headache, vomiting, nausea. A worker sprayed Naled from inside an enclosed cab. He vaguely recalls smelling a chemical odor, which may have entered through a ventilation system. He developed symptoms and saw a doctor the next day. So not only are citizens at risk, the applicators are at risk. Another case, 1999. I'm just baffled that they weren't able to present these cases when they were asked about them. 1999, case number 519, a probable case, five days lost of work. Medical description, nausea, dizziness, headaches when a pest detection trapper -- not only the applicators, but the people that are actually monitoring the traps for pests -- opened her equipment lockbox, the Naled fumes from her traps overwhelmed her. She reported her symptoms to her supervisor, who took her to the doctor. She was repeatedly contacted, but was not available to be interviewed. And the product was Naled and petroleum distillates. Another case in 1999, 789. A possible case. Medical description, light-headedness, woozy feeling, headaches, nausea. All these things I keep repeating. And when we look at our list of injured people and victims in Santa Barbara, they're all consistent. They're all consistent with the pesticide, they're all consistent with the symptoms. And it will be very hard to dispute the fact that people have been poisoned in Santa Barbara, especially when you keep reading more and more cases, and you look at the symptoms, they are very consistent with the symptoms of pesticide poisoning from Naled.

Response:

This comment is outside the scope of this rulemaking.

Comment:

Notification has been brought up many times in this discussion and people are requesting that more notification be given. Well, the SLN, itself, states that - - under other requirements,

"the residents shall be notified prior to application." A violation of notification occurred in Santa Barbara County as people had no 24-hour prior notice of application for the first application on July 29th. California State law requires a 24-hour prior notification. So this request that it be included already exists. It was a violation that it wasn't applied. The City and County Council members did not find out of the application until after the fact. The SLN was signed off on July 27th, which would give a 24-hour period for people to have become aware of the application, and that did not occur.

Response:

This comment is outside the scope of this rulemaking.

Comment:

There's many inconsistencies. If you go to the proclamation presented by Valerie Brown, from the CDFA, it states "two female Oriental Fruit Flies on July 26th, and one male/female" - - or sorry, "and one male on July 27th." However, if you go to the Plant Health and Pest Prevention Service the findings are completely opposite, it was two males, not two females. So there's much inconsistency, we don't even know what was actually found or how many. And these are State organizations that are actually doing the protocols. So I'd like some clarification on what actually was found, because CDFA and Plant Health and Pest Prevention have contradictory information.

Response:

This emergency amendment to the regulation was the result of recovering two mature female Oriental fruit flies from a trap in the Santa Barbara area of Santa Barbara County. This occurred on July 26, 2006. After the initiation of this emergency action, a male Oriental fruit fly was taken from a trap on July 27, 2006. The remainder of this comment is outside the scope of this rulemaking.

Comment:

But what I do want to say is that my private property was sprayed and I wonder who is regulating the personnel that is spraying this Spinosad -- I mean, excuse me, this Naled. And gosh, now I'm -- so my private property was sprayed and I, actually, when they came around the third, the fourth time to spray, I actually guarded my property. I was out there physically

guarding them, stopping them from coming up and spraying my property. And it seems to me that the State's got a financial possible openness here because lawsuits could happen.

Response:

This comment is outside the scope of this rulemaking.

Comment:

We're an organic family, and I don't spray pesticides on my property, yet I have no control over them spraying pesticides on my property, in my neighborhood. My daughter runs for cross country and runs right past those trees that got sprayed, not to mention all the other people in the neighborhood. So I'm just concerned and feel powerless.

Response:

This comment is outside the scope of this rulemaking.

Comment:

First of all, as a farmer, we have to be very concerned about the eradication of the fruit fly and efforts have to be diligent, but they have to take into consideration the general public health. So I'll leave it at that.

Response:

The Department concurs with this comment.

Comment:

It seems like the response of making the entire County an eradication zone is to the opposite, it is giving the governmental officials much more unfettered discretion in moving forward, and it's a chilling effect to me to think that with this lack of control that we might have similar incidents occurring in the future, which should not be the case.

Response:

The Department does not concur with this comment.

Comment:

I will specifically emphasize my concern about our water supply.

Response:

This comment is outside the scope of this rulemaking.

Comment:

What does the impact of making Santa Barbara a mandatory spray zone have on its population and what are the long-term implications to the economy and the resident population? At first, the weaker citizens will become ill or diseased. Then in time, the healthier members of the community will succumb to the ever-increasing environmental load. Once the word gets out that the community is sicker than others, residents may begin to move away and then the economy will suffer. In summary, uncontrolled, unmonitored, unquantified risk and unusually toxic spraying will lead to a potentially irreversible polluted environmental situation. It could take years, if not a lifetime, to reverse this environmental load. It may make it difficult to filter the ground water to make it suitable for consumption, for plants or humans. Be aware that these studies have pointed out all chemicals, pesticides, hormone mimics and xenobiotics flow through each and every individual, even if they eat organic foods. The Forensic Toxicology Lab, the Common Wheel Biomonitoring Resource Center, and the Environmental Work Group Studies have proven outside a doubt that we all carry a body burden of chemicals, pesticides, and other toxic materials and that this toxic load can cause illness and fatal death.

Response:

The Department does not concur with this comment which is outside the scope of this rulemaking.

Comment:

But I think from our side, from my point of view, anyway, if anything that would serve to increase the speed of a future outbreak, and let's hope there's not, but in the case of year or so, or something, there would be another outbreak somewhere else in the county, if this were to speed up the Department's ability to come in, declare an outbreak and begin to attack it, then I would be for that, with proper notification and so forth, which I think will probably be changed on the basis of what you've heard today. Anyway, thank you for your time and thank you for your help this summer.

Response:

The Department appreciates this support.

Comment:

If this was a suspected terrorist squirting Naled around our community, he would be apprehended and charged with a terrorist act with using a weapon of mass destruction. Just because the applicator is wearing gloves and driving around in a sealed truck makes it safe for him, but he has just put the public at risk and is doing the same as a terrorist act. My question to you, now, is why can't we use a safer alternative? Why don't we try that, first?

Response:

This comment is outside the scope of this rulemaking.

Comment:

We were given a notice in the mail, as residents. We live by Puente and Hollister, as well. Driving out of our streets, I see people that come from different neighborhoods to walk their dogs, pregnant mothers, gardeners, service people coming through our area, that were not given notices because they do not live in our area. So, therefore, the public notification is not always a safe alternative. I read letters to the editor in our local paper, and I notice that the writers, who defend pesticides, are usually making a living at it, whether being a pest management control company, or a lobbyist for agriculture, et cetera, these people have special interest with pesticides being applied. The interest is money.

Response:

This comment is outside the scope of this rulemaking.

Comment:

And I want to come out against the proposed amendment, to amending the regulations, because that occurs to me like more of the same, it's just another way of keeping the public out of the picture and allowing the government agencies to do what they want, with as little input as possible. Even though we don't even know what it means, the amendment, to have the county be a permanent eradication zone. What needs to happen and what I suggest is that instead of being adversaries, that we actually work together and what needs to happen is the CDFA needs to have public health as the top priority. It needs to let the people know that that's a top priority and, actually, actively pursue alternatives that are safe. And if a situation arises where toxic chemicals need to be used, that the people are informed that, A, we attempted to use nontoxic solutions, they failed, we are resulting -- we are resorting to this as

the last resort, and this is the danger. This is the chemical we're using, this is how it can cause health concerns for people, this is how you need to protect yourself. We need an honest communication from the CDFA. And that, I don't think, is going to happen with this proposed amendment.

Response:

The Department does not concur with the statement, "it's just another way of keeping the public out of the picture." The balance of this comment is outside the scope of this rulemaking. However, the Department does believe in honest communication and does have public health as a priority.

Comment:

In addition to be sprayed on public property, it is an infringement of our rights to breath and live healthy air, and water, and neighborhoods.

Response:

This comment is outside the scope of this rulemaking.

Comment

Several commentors made reference to the use of pesticides, alternatives to pesticides, IPM (integrated pest management), neurotoxins, notification requirements related to pesticide use, toxicity of pesticides and allegations of applying pesticides unlawfully on private property during the program's operations.

Response

These regulations do not mandate the specific use of any pesticide; such comments are outside the scope of this rulemaking.

**WRITTEN COMMENT PERIOD:**

Comment:

A public hearing is needed to shed light on all aspects of the proposed amendment. We urge that the public hearing be held well in advance of October 30, 2006, the close date for open comment. We request that a two-week prior notice be given to us by Certified mail and E-mail.

Response:

The Department concurs with the need for a public hearing but cannot hold a public hearing prior to October 30, 2006 due to the requirements contained in the California Administrative Procedure Act. On October 10, 2006, the Department emailed the "NOTICE OF PUBLIC HEARING CONCERNING PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF FOOD AND AGRICULTURE Pertaining to the Oriental Fruit Fly Eradication Area," to this commenter and mailed it to them on October 11, 2006. The Department is not obligated to send a notice via "Certified" mail.

Comment:

How about holding a public review at a reasonable time, so all can attend and give you input on how to solve this problem?

Response:

The Department concurs with this comment and a public hearing regarding the amendment of the regulation was held on October 31, 2006 and a public meeting to discuss and exchange ideas with the community was held on November 13, 2006; both meetings were held in Santa Barbara.

Comment:

We are appreciative of your effort in setting a prompt date for the meeting. October 31st (Halloween - an unofficial holiday) though, is not a viable time for community residents to participate. Families told us of their unavailability. To families Halloween is a time when parents are at school functions, with their children, and/or at home when people ring their doorbells. I would appreciate the re-setting of the date for the Regulatory Meeting. I suggest Monday November 13th, as an excellent time, If that is possible for you, Mothers and fathers who pick up their children at school would still be able to attend from a 1 p.m. starting time. Tuesdays are not appropriate because of City Council, and Board of Supervisor meetings.

Response:

The Department concurs with this comment. The Department scheduled a "regulatory meeting" with the community and held it on November 13, 2006. However, if this comment is meant to pertain to the scheduling of the public hearing regarding the proposed amendment of the regulation, the Department does not concur with this comment. The Department first



received requests to hold a public hearing “well in advance” of October 30, 2006. Under the California Administrative Procedure Act, the first date the public hearing could be scheduled was October 31, 2006. Therefore, the Department scheduled the public hearing for October 31, 2006 in an effort to accommodate those who first requested a public hearing be held. The Department specifically reminded the commenter that both written and verbal comments were given equal weight and the options/procedures for providing such comments. The remainder of this comment is outside the scope of this rulemaking.

#### Comment

Thank you for your reply via email re: the date of the Public Hearing in Santa Barbara. I appreciate the need to have this Public Meeting as soon after the 30th of October as possible. With that in mind I request that this meeting (in the interest of the Public) be held on one of the following dates, i.e. November 1<sup>st</sup> or 2<sup>nd</sup>.

#### Response:

The Department does not concur with this comment which was received after the “NOTICE OF PUBLIC HEARING CONCERNING PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF FOOD AND AGRICULTURE Pertaining to the Oriental Fruit Fly Eradication Area” was already being distributed. The Department scheduled a “public hearing” for October 31, 2006 and at the same time a “public meeting” to discuss community concerns was being scheduled for November 13, 2006. This may have led to some confusion in the community. In order to help ensure there was no additional confusion, the Department elected not to change the date of the public hearing which was scheduled for a normal work day.

#### Comment:

Due to the amount of interest from the general public regarding this matter, we request that the public hearing be held in Santa Barbara, and that the CDFA representatives who will attend the public hearing be listed in your response.

#### Response:

The Department concurs that a public hearing should be held in Santa Barbara and it held a public hearing on October 31, 2006. The remainder of this comment is outside the scope of this rulemaking.

Comment:

Due to the amount of interest from the general public regarding this matter, we request that the public meeting be held in Santa Barbara at City Hall.

Response:

The Department does not concur with this comment.

Comment:

We have not been informed of the CDFA's intention to make Santa Barbara a permanent eradication zone.

Response:

The Department mailed the notice of proposed changes to this regulation to all known interested parties on September 13, 2006. The notice was also published in the California Regulatory Notice Register on September 15, 2006. On October 11, 2006, the Department subsequently mailed the "NOTICE OF PUBLIC HEARING CONCERNING PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF FOOD AND AGRICULTURE Pertaining to the Oriental Fruit Fly Eradication Area," to all known interested parties. The Department received one letter that was signed by multiple individuals with one "in care of" recipient and return address. The Department mailed both the "Notice" and the "Notice of Hearing" to the "in care of" address and recipient. The Department also emailed the "Notice of Hearing" to all those who requested it via email. The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/cdfa.pendingregs](http://www.cdfa.ca.gov/cdfa.pendingregs)).

Comment:

On October 25, 2006, the Department received the email comment, "My name is Rachel Couch and I work for Santa Barbara County Supervisor Susan Rose. Can you please send us by email the notice that was sent out regarding the regulatory hearing for the Oriental Fruit Fly for Santa Barbara County? We do not yet have the official information and would like to have the details."

Response:

The Department does not concur with this response. On October 10, 2006, the Department emailed the "NOTICE OF PUBLIC HEARING CONCERNING PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF FOOD AND AGRICULTURE Pertaining to

the Oriental Fruit Fly Eradication Area,” to Supervisor Rose and it was subsequently mailed to the Santa Barbara Board of Supervisors on October 11, 2006.

Comment :

There is overwhelming evidence from the public here that the Halloween day date that you have suggested, makes it virtually impossible for the majority of people wishing to actually attend that meeting, to do so. It is my understanding that this meeting is held in the public interest. I believe that the Halloween date is not in the public interest. I believe that it is reasonable to urge that one day later (or if you choose...two days at most) is still timely. I realize your need to review, and then submit your responses to the Office of Administrative Law by November 27th. Considering the needs of the public (on this issue), would that extra day not give you sufficient time to still meet your November time frame? Since an emergency exemption for this area has already been filed, it is my understanding (from the OAL), that if needed, an extension to the November 27th date (to submit the report) would be provided without difficulty. I respectfully request that in the Public interest, that you reconsider, and reschedule the Public Hearing date from Halloween Day to the next day or the day after. I thank you in advance for your cooperation in this matter.

Response:

The Department does not concur with this comment which was received after the “NOTICE OF PUBLIC HEARING CONCERNING PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF FOOD AND AGRICULTURE Pertaining to the Oriental Fruit Fly Eradication Area” was already being distributed. The first requests received by the Department for a public hearing pertaining to this issue had wanted the public hearing held “well in advance” of October 30, 2006. The Department arranged for the public hearing on October 31, 2006 in an effort to accommodate these requests. The Department and community leaders were also trying to arrange a “Town Hall” informational meeting that was being scheduled for November 13, 2006 and its purpose was to afford the opportunity to more freely exchange ideas and information with the affected community. There appeared to be some confusion regarding the purpose of the “Public Hearing” and the “Town Hall” informational meeting with some parties wondering who would be on the discussion panels of the “Public Hearing.” To avoid any further confusion, the Department elected not to change the original date of the “Public Hearing.”

Comment:

You should know that while I was a signatory to the request for the hearing, I did not receive the notice from your department.

Response:

The Department does not concur with this comment. The Department received one letter that was signed by multiple individuals with one "in care of" recipient and return address. The Department mailed both the "Notice" and the "Notice of Hearing" to the "in care of" address and recipient. The Department also emailed the "Notice of Hearing" to the only email address contained in the letter which was the "in care of" recipient's email address. The Department was under no obligation to try to determine the possible addresses of the other individuals who signed the letter.

Comment:

I just want to add my voice to those who prefer to meet with a representative of the Department of Food and Agriculture concerning proposed changes in the regulations of the Department of Food and Agriculture pertaining to the Oriental Fruit Fly Eradication Area.

Response:

The Department concurs with this comment and held such a meeting on November 13, 2006 in Santa Barbara.

Comment:

CDFA just reported that the latest computer models of life cycle length show that the treatment scheduled for September 26 is not necessary and that it has been cancelled.

Response:

The Department concurs with this comment.

Comment:

I am a resident of Santa Barbara and just learned that the California Dept. of Food and Agriculture intends to make Santa Barbara as a permanent eradication zone. The result of this amendment would be to expedite future rounds of poison sprayings such as those endured in our communities during August and September of this year.

### Response

The Department does not concur with this response. The specific purpose of the amendment of Section 3591.2 is not to expedite the use of “poison sprays” in Santa Barbara County. This regulation establishes that all known hosts that are infested or are exposed to infestation by the Oriental fruit fly are a public nuisance and the means and methods that may be used in the eradication and control of this pest in Santa Barbara County. These include the following options:

- A. The use of insecticides, chemicals, or other materials as spray, dust, bait, or in any other manner as often as necessary to effect eradication;
- B. The search for all stages of Oriental fruit fly by visual inspection, the use of traps, or any other means;
- C. The removal and destruction of abandoned or unwanted plants bearing or capable of bearing hosts;
- D. The importation, rearing, liberation, and fostering of parasites and predators which attack Oriental fruit fly; and,
- E. The importation, rearing, or liberation of sterile forms of the Oriental fruit fly.

Which of these options are implemented by the Department would depend upon whether it is conducting an eradication program or a control program and the best available science to support the different specific goals of these programs. An eradication program is conducted when the presence of the pest is not accepted in the area and it is still feasible to eradicate it. A control program would be conducted when it is no longer feasible to eradicate the pest from a given area but the goal is to minimize the damage being caused by the pest and/or retard the spread of the pest. For instance, the use of parasites and predators which attack Oriental fruit fly would be scientifically valid for a control program but have not been recommended by a Science Advisory Panel for an Oriental fruit fly eradication program.

### Comment:

I want to protest the CDFA's attempt to make Santa Barbara a permanent eradication zone for toxic spraying!! There is no reason to do this, when there are many, many alternatives to

control fruit fly infestation. After all, we don't want fruit flies either.

Response:

The Department does not concur that there is no need to complete its rulemaking activities as required by the California Administrative Procedure Act. The regulatory authority of Section 3591.2 includes, "The searching for all stages of the fly by visual inspection, the use of traps, or any other means." The fact that Oriental fruit flies were found in Santa Barbara County makes it clear that there was an established introduction pathway into Santa Barbara County. The most likely introduction pathway was the smuggling of infested fruit into Santa Barbara. The Department has no way to verify that this potential pathway has been closed. Therefore, there is a demonstrated need for the Department to continue to perform ongoing detection activities as authorized under Section 3591.2. The Department concurs there are many ways to control fruit flies which is a different strategy than eradicating fruit flies. The Department appreciates the support for eliminating fruit flies. The balance of the comment is outside the scope of this rulemaking.

Comment:

I just got an email regarding the hearing. Having just put in our organic garden in Montecito, we stand for a pesticide free Santa Barbara for our children and our children's children. We will be there tomorrow - we must!! Thank you for your hard work on this. We needed to know!

Response:

This comment is outside the scope of this rulemaking which does not deal with organic gardening or a pesticide free Santa Barbara. The Department acknowledges the importance of this issue to members of the community and concurs that it provided notification of the hearing as legally required under the California Administrative Procedure Act.

Comment:

I have learned that CDFA filed this amendment and would have received approval on October 30th silently, with no notification to our community or our elected officials. Only through extended research on our part did Santa Barbara residents learn of this filing. I am interested in learning from you, Mr. Brown, as to why you did not fully notify Santa Barbara residents and officials concerning this filing, which as you know, would have a huge impact

on our Public Health and Welfare. Is it perhaps because you know that toxic spraying, such as Naled that was used on our community, creates serious health problems, both immediately as well as long-term? Or perhaps you heard our protests, all the way from Santa Barbara to Sacramento? We were extremely unhappy and frustrated that this toxic nightmare was visited onto our communities, without public notification or review or comment. Or perhaps you are aware of our concern that our groundwater wells, in the immediate vicinity of your Naled spraying, may become contaminated, with the result that our stored drinking water will become undrinkable? Or perhaps it is because your CDFA is unwilling to consider non-toxic alternatives to spraying? Or perhaps because you are aware that areas in Hawaii, after extensive and unsuccessful toxic spraying, were moved from "eradication" sites to "control" sites, because repeated toxic sprayings did not work?

Response:

The Department does not concur with this response. The Department is required to comply with California Rulemaking Law under the Administrative Procedure Act and its related regulations. The "Notice" and the "Notice of Public Hearing" were mailed to: Brian Barnwell, Grant House and Das Williams, all Santa Barbara City Council Members; Susan Epstein, Goleta School Board Trustee; the Santa Barbara County Board of Supervisors; Mayor Jonny Wallis, Goleta; Mayor Marty Blum, Santa Barbara; The Honorable Tom McClintock, Member of the Senate; and, The Honorable Pedro Nava, Member of the Assembly. The "Notice" and the "Notice of Public Hearing" were also mailed to all residents that the Department had the complete name and address for and where the Department was aware of their interest in this issue. The Department mailed the notice of proposed changes to this regulation to all known interested parties on September 13, 2006. The notice was also published in the California Register on September 15, 2006. On October 11, 2006, the Department subsequently mailed the "NOTICE OF PUBLIC HEARING CONCERNING PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF FOOD AND AGRICULTURE Pertaining to the Oriental Fruit Fly Eradication Area," to all known interested parties. The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/cdfa.pendingregs](http://www.cdfa.ca.gov/cdfa.pendingregs)). If and when pesticides are used, it will be done in full accordance with pesticide laws and regulations. In some cases materials may be used under special registrations or exemptions, but this is permissible and does not represent a circumvention of the pesticide regulatory process. Any treatments performed will be in

accordance with all applicable laws, regulations, and use restrictions. The remainder of this comment is outside the scope of this rulemaking.

Comment:

After all, it is we who live here. It is we, and especially our children, who may develop cancer in 5 or 10 years because of toxic spraying.

Response:

This comment is outside the scope of this rulemaking. Pesticide regulatory agencies, not CDFA, are responsible for regulating pesticide use. This includes determining what constitutes safe use, whether or not available studies are adequate, and prescribing limits and precautions for use of pesticides. The Department, by law, is required to comply with the regulatory decisions issued by the U.S. EPA and California Department of Pesticide Regulation based on their expert analysis, interpretation, and evaluation of pesticide testing data. The Department also works with State and local health departments to provide the medical community with information about any pesticide application programs that may be necessary in non-agricultural environments, e.g., urban and residential neighborhoods. Individuals are encouraged to contact either the local health department or agricultural commissioner's office, or special telephone numbers that are set up to receive health related questions or reports of illness. In addition, physicians are required by law to report any illness or condition that they suspect may be related to exposure to a pesticide.

Comment:

I want to express my concerns about the current Oriental fruit fly eradication program being conducted by the CDFA. I am asking that you ensure that the addition of Santa Barbara to the eradication program by the means of the Amendment to the regulations is more in line with the City Integrated Pest Management Program which we worked 6 years to develop. Our IPM is endorsed by our City Council as guidelines for managing weeds and pests using "least toxic" methods especially for the purpose of promoting and protecting the health and welfare of our citizens, includes:

- 1) A requirement to develop lower toxicity materials,
- 2) A requirement to conduct a quantitative risk analysis of the health effects of the Program, and



3) A requirement to provide appropriate notification to residences,

I want to emphasize that I agree entirely with the need for an aggressive approach to eradication of the fruit fly and its potentially devastating impact to agriculture and residential yards throughout the state. However, more consideration and resources should be given to protecting public health in urban areas, particularly when less toxic methods have demonstrated equal effectiveness. The City of Santa Barbara has developed a comprehensive integrated pest management program that utilizes low toxicity pesticides. We have a well established network of citizens who are concerned about their health and the environment. We have received numerous reports of children and adults becoming sick during the fruit fly eradication period in Santa Barbara. This is cause for considerable concern as these types of programs are ongoing throughout the State and Country. The effectiveness of alternatives has been demonstrated by the CDFA itself through the use of spinosad as fruit fly bait. Although the formulation or application approach might be different than current practices, the materials effectiveness has been well demonstrated by the CDFA itself and by Dow Agrosiences. There are other materials, Suredye for example, which may prove to be equally effective. These materials need to receive higher priority in the process and the development of these alternatives should be a condition placed on the Amendment being considered.

Response:

This comment is outside the scope of this rulemaking. This regulation does not mandate the use of any specific chemical. The program is an end user of products that are registered for legal use in California. The program is obligated to follow all label or supplemental label directions regarding the use of the product. Which chemicals are used is based upon what is scientifically accepted for achieving the stated purpose. In this case, the purpose is the eradication of Oriental fruit fly and it is based upon internationally accepted scientific standards. The regulations are already sufficiently flexible to allow new effective control methods to be adopted and implemented by the program.

Comment:

In regards to the burden to private citizens, the CDFA and State and Federal agencies have yet to prove that the program and its current practices are within acceptable quantitative risk criteria. None of the EIRs have addressed this issue to date, and the EPA has not conducted a quantitative health risk assessment on these types of naled applications. In fact, as per the

EPA Re-eligibility Decision Document for Naled, “Naled may no longer be used in and around the home by residential and professional applicators” and that mitigation measures for the agricultural community resulting from the EPA RED study include a “48 hour reentry intervals after application to field crops”. Both of these conditions indicate that it is very probable that the applications of naled as a part of the fruit fly eradication program in urban areas would present significant risks to private citizens and would warrant additional mitigation, thereby constituting an unacceptable burden. Note that the EPA RED document did not examine the risks of fruit fly types of naled applications. At a very minimum, quantitative health risk assessments should be conducted on these programs, as are conducted by the EPA on numerous pesticides for agricultural use and this should be a condition placed on the amendment currently being considered. Notification was not conducted during the recent program in Santa Barbara until well into the program. Many residences awoke to find out that their trees had been sprayed, materials had been applied on their property without their knowledge and that they or their children were suffering possible health effects.

Response:

This comment is outside the scope of this rulemaking.

Comment:

Notification of residences is good practice, particularly as up to 5,000 applications of the gel-like material are being applied in a dense, urban, residential area. Notification would allow for residences to take appropriate steps to protect their health, such as closing windows, preventing children from playing outside during or immediately after applications, etc. The EIR conducted in 1993 states that, as a matter of policy, notifying residences should be conducted and this is listed as a mitigation measure in the EIR. The California Code of Regulations (sect 5773) states that all residences should be notified in the application area for aerial spraying applications only. However, I believe this should be for all applications of pesticides that are conducted in urban areas and that this should be a condition placed on the Amendment currently being considered. I am also requesting that any eradication program that is conducted within the City of Santa Barbara be considerate of the IPM Program we have in place, which has been endorsed by our City Council as a local measure to protect the health and welfare of our community.

Response:

This comment is outside the scope of this rulemaking.

Comment:

This means a great deal to us, and we want fair treatment, beginning with the CDFA dropping your request to make Santa Barbara a permanent eradication zone.

Response

The Department does not concur with this comment. The Department is required to comply with California Rulemaking Law under the Administrative Procedure Act and its related regulations. Emergency regulations must be certified as in compliance with provisions of Section 11364.1 of the Government Code within 120 days of the emergency regulation or obtain approval from the Director of the Office of Administrative Law to readopt the emergency regulation. This regulation is needed to implement, interpret, and/or make specific statutes enforced or administered by this Department that deal with the serious pest threat posed by the Oriental fruit fly. The evidence overwhelmingly supports the conclusion that Oriental fruit fly is a serious threat to California, and that the program and regulations are effective and necessary actions for preventing wide scale damage in the State from these pests.

Comment:

I am writing to let you know that the application of Naled to trees around my home and my son's school was heavily burdensome to me and my family. My son plays on the school playground below where three oak trees were sprayed on Vieja Drive. These trees were releasing dichlorvos via your timed-release process. My son became very ill with difficulty breathing and coughing literally every second. In the end, after I consulted two doctors, the only thing that would help him was leaving the area. I had to go and live with my brother in Santa Rosa until two weeks after the last application of Naled. The cost was high to us emotionally, as my son missed school, I had to withdraw from my classes at Santa Barbara City College, falling behind a semester, and my son missed his sports games. I also missed the support of my husband, who had to remain behind for work, and our friends. It cost us financially too, as we spent money on gas, hotels, restaurants, and replacement of belongings we needed. I lost hundreds of dollars in SBCC tuition. We also suffered the stress

of having this done to us without any notification or any discussion. We felt powerless. Lastly, we face the fear of what the long-term consequences of this toxin might be, especially since no human health assessment has been carried out to test the applications the CDFA so freely performed on our neighborhood. If any more fruit flies are found in our neighborhood, we ask that the CDFA be prepared with a less-toxic means of treating the outbreak, because the cost and burden of Naled treatments is not acceptable.

Response:

This comment is outside the scope of this rulemaking. The Department concurs that some persons have expressed concern about the use of pesticides in the program. However, the Department has conducted extensive environmental review to determine the potential environmental impacts of the Program, including preparation of a final environmental impact report for the program. This review determined that the program does not present the risk of causing significant impacts to human health or the environment. In California, evaluation and enforcement of pesticide products is under the jurisdiction of the U.S. Environmental Protection Agency (U.S. EPA) and the California Department of Pesticide Regulation (CDPR). The U.S. EPA and CDPR evaluate pesticides for potential effects on human health prior to registration and require appropriate use restrictions be present on the pesticide label to ensure a reasonable certainty of no harm to human health and the environment. The Department is obligated to adhere to the program as certified by the Secretary of Resources. Federal and state regulations impose requirements on the registration and use of pesticides; federal, state, and local agencies enforce these requirements. The U.S. EPA regulates pesticides under three major statutes: the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Food Quality Protection Act (FQPA). FIFRA requires that pesticides be registered before they can be sold or distributed for use in the United States. The FQPA was signed in 1996 to amend both FIFRA and FFDCA and to strengthen the U.S. pesticide regulatory system. FQPA requirements include a new safety standard - reasonable certainty of no harm - that must be applied to all pesticides used on foods. The U.S. EPA requires extensive data as part of its pesticide review and approval process, requiring more than 120 studies before granting a registration for most pesticides used in food production. California state programs closely parallel federal programs; however, California's data requirements are stricter than those of the federal government. Comments concerning decisions of those agencies as to adequacy

of the established limits are outside the scope of this rulemaking. The balance of this comment is outside the scope of this rulemaking.

Comment:

I am asking that you ensure that the addition of Santa Barbara to the eradication program by the means of the Amendment to the regulations includes:

- 1) A requirement to develop lower toxicity materials,
- 2) A requirement to conduct a quantitative risk analysis of the health effects of the program, and
- 3) A requirement to provide appropriate notification to residences.

Response:

This comment is outside the scope of this rulemaking. This regulation does not mandate the use of any specific chemical.

Comment:

We are requesting the CDFA give equal concern and protection to the public. We are requesting that the CDFA use safer alternatives. We are requesting that the CDFA adhere to their own mission statement. We are requesting that the eradication proposal be amended to eliminate the use of NALED (and other organo-phosphates) as per the CDFA's own requirements (and the warnings of the manufacturer).

Response:

This comment is outside the scope of this rulemaking. However, the Department concurs it should give equal concern and protection to the public and adhere to its mission statement. The Department does not concur that it has specific requirements regarding the use of Naled.

Comment:

However, more consideration and resources should be given to protecting public health in urban areas, particularly when less toxic methods have demonstrated equal effectiveness.

Response:

This comment is outside the scope of this rulemaking. However, the Department concurs with the need to protect public health in urban areas. The Department does not concur with the balance of the statement.

Comment:

The City of Santa Barbara has developed a comprehensive integrated pest management program that utilizes low toxicity pesticides. We have a well established network of citizens who are concerned about their health and the environment. We have received numerous reports of children and adults becoming sick during the fruit fly eradication period in Santa Barbara. This is cause for considerable concern as these types of programs are ongoing throughout the State and Country.

Response:

This comment is outside the scope of this rulemaking.

Comment:

As per the Alternative section of the regulations, I believe that there are alternatives which would be "*as effective and less burdensome to affected private persons than the proposed actions*". The effectiveness of alternatives has been demonstrated by the CDFA itself through the use of Spinosad as a fruit fly bait. Although the formulation or application approach might be different than current practices, the materials effectiveness has been well demonstrated by the CDFA itself and by Dow Agrosiences. There are other materials, Suredye for example, which may prove to be equally effective. These materials need to receive higher priority in the process and the development of these alternatives should be a condition placed on the Amendment being considered.

Response:

The Department believes much of this comment is outside the scope of this rulemaking. Regardless, the Department does not concur with the comments that the use of Spinosad and Suredye were demonstrated as effective for eradicating the Oriental fruit fly as using Naled and methyl eugenol in the male annihilation technique. SureDye is a photoactive chemical dye tested in the late 1980's through the mid 1990's as a replacement for malathion in protein bait sprays that were applied by air. It must be ingested and the insect subsequently exposed to sunlight to be effective. Currently it is not registered for fruit fly control by the U.S. Environmental Protection Agency; nor registered as an insecticide by the California Department of Pesticide Regulation; and, it is not used for fruit fly control anywhere in the world. Spinosad is an insecticide developed in the 1990's that contains metabolites of a soil bacterium that are toxic to insects. It can kill insects through contact and ingestion, but

it is five to ten times more effective if ingested. Spinosad is not compatible with the program's current male annihilation technique spray technology because it degrades within about a week, while the lure remains effective for at least two weeks. Spinosad is used for fruit fly control worldwide when combined with a protein hydrolysate bait and applied by ground or air over a given area. Research is under way to formulate a sprayable mixture of methyl eugenol and a different matrix but the research has not been completed. The Department concurs that research to develop alternatives having the same effectiveness is a priority but does not concur that it should be a condition of the regulation. The regulation does not specify what chemical materials should be used, that is an operational decision made at the program level based upon those materials that are registered for the intended use.

Comment:

In regards to the burden to private citizens, the CDFA and State and Federal agencies have yet to prove that the program and its current practices are within acceptable quantitative risk criteria. None of the EIRs have addressed this issue to date, and the EPA has not conducted a quantitative health risk assessment on these types of Naled applications. In fact, as per the EPA Re-eligibility Decision Document for Naled, "*Naled may no longer be used in and around the home by residential and professional applicators*" and that mitigation measures for the agricultural community resulting from the EPA RED study include a "*48 hour reentry intervals after application to field crops*". Both of these conditions indicate that it is very probable that the applications of Naled as a part of the fruit fly eradication program in urban areas would present significant risks to private citizens and would warrant additional mitigation, thereby constituting an unacceptable burden. Note that the EPA RED document did not examine the risks of fruit fly types of Naled applications. At a very minimum, quantitative health risk assessments should be conducted on these programs, as are conducted by the EPA on numerous pesticides for agricultural use and this should be a condition placed on the amendment currently being considered.

Response:

This comment is outside the scope of this rulemaking. Any pesticides used by the Department are used in compliance with the applicable label, which includes a Special

Localized Need (SLN). Comments regarding the EIR are outside the scope of this rulemaking.

Comment:

Notification was not conducted during the recent program in Santa Barbara until well into the program. Many residences awoke to find out that their trees had been sprayed, materials had been applied on their property without their knowledge and that they or their children were suffering possible health effects. Notification of residences is good practice, particularly as up to 5,000 applications of the gel-like material are being applied in a dense, urban, residential area. Notification would allow for residences to take appropriate steps to protect their health, such as closing windows, preventing children from playing outside during or immediately after applications, etc. The EIR conducted in 1993 states that, as a matter of policy, notifying residences should be conducted and this is listed as a mitigation measure in the EIR. The California Code of Regulations (sect 5773) states that all residences should be notified in the application area for aerial spraying applications only. However, I believe this should be for all applications of pesticides that are conducted in urban areas and that this should be a condition placed on the Amendment currently being considered.

Response:

Most of this comment is outside the scope of this rulemaking. This regulation does not deal with the issue of pesticide notification. However, the Department met its legal obligation for providing such notification to the public. The Department concurs that clearer communication needs to occur between it and the affected community. Comments regarding the EIR are outside the scope of this rulemaking.

Comment:

I understand that you plan to use the product Naled/Dichlorvos Against Fruit Flies. I am an engineer and have access to the medical Toxicology Journals, with a repository of research over the internet. When I heard what the spray was I looked at it in terms of what medical research said about the product. What I found is that there are dozens of recent papers stating that NALED is very hazardous, and with near certainty causes breast cancer, Autism, Lymphoma. I have attached some web site links so that you can read this data for yourself. Also brochures on NALED recommends not spraying in urban/residential areas. Dichlorvos is



a toxicant that evaporates off the sprayed NALED, so the method of original application has less bearing on the toxicity, as you know. So I want to know if multiple users recommend not using in urban/residential areas, why then can you even legally or safely use it. Can you tell me if you believe the application notes for the NALED are correct, and if there is an exception, could you clarify why you would non follow the application note. The last time 2 times it was applied, I had a strange headache, and very unusual pinpoint pupils, the smallest they have ever been. I also had problems with my Periferal vision, which I told my wife about. I have a photo of my small pupils, if you doubt my claims. Please see the URLs with good scientific research showing the lethality and toxicology effects:

<http://tinyurl.com/qlu2e>

Naled is causing Breast Cancer in small concentrations:

<http://tinyurl.com/ffhb9>

Naled/Dichlofos and other OrganoPhosphates have strong link to Austism syndrome

<http://tinyurl.com/eqol8>

EPA says that any spraying drifts into our homes:

<http://www.cdpr.ca.gov/docs/factshts/epadoc.htm>

I am just recently married and I want to have children, god willing. The EPA and WHO state clearly that NALED is a suspected Carcinogen. Medical researchers with about 10-20 year each of PhDs clearly state the problems. I would like you to consider that the Medical research is correct, and err on the side of protecting my family. How can it be that we must be forced to be next to a chemical that most likely causes several cancers, and autism? Do you guarantee that my family will not be harmed by this? Furthermore, Autism has risen dramatically in California, and it will likely be found to be chemically induced, this sudden increase cannot be genetic. How can you in good faith use this NALED. I strongly urge you to use a chemical that is not a carcinogen. You are not supposed to spray it in urban/residential areas, per the instructions. Please don't use Naled, and find a chemical that is not Carcinogenic and causing Autism. Please call me and I can show you about 20 more articles from US, Canada, Japan and Europe on the carcinogen Naled/Dichlofos.

Response:

This comment is outside the scope of this rulemaking.

Comment:

I live in Santa Barbara and I strongly object to the use of Naled or other Organo-Phosphates for pest prevention or eradication. The California Department of Food and Agriculture (CDFA) must give equal concern to the protection of the health of citizens. There are alternatives available that are Not Neuro-toxins. I request that the CDFA investigate, AND THEN USE, every possible safe, non-toxic to humans or pets, alternative method of pest prevention or eradication.

Response:

This comment is outside the scope of this rulemaking.

Comment:

While it is undoubtedly important to eradicate the fruit fly, it is equally important to protect the health of the citizens of Santa Barbara, and citizens throughout California. The EPA Re-eligibility Decision Document for Naled specifically states, "Naled may no longer be used in and around the home by residential and professional applicators". It appears that Naled, as a part of the fruitfly eradication program in urban areas, presents significant risks to private citizens. During the recent program in Santa Barbara, many people found that their trees had been sprayed without their knowledge. Both children and adults became sick. This is a widely reported fact. The City of Santa Barbara has a pest management program that utilizes low toxicity pesticides. I would respectfully ask that the CDFA investigate the use of lower toxicity materials in the oriental fruit fly eradication program.

Response:

This comment is outside the scope of this rulemaking. However, the Department has a permit known as a "Special Location Need" (SLN) issued by the California Department of Pesticide Regulation (CDPR) on behalf of the U.S. EPA to use Naled with an attractant for its male annihilation technique (MAT) program. This SLN restricts the use of Naled to hand sprayed spot applications to bait stations. Naled was reregistered by the U.S. EPA in January 2002 and additional restrictions were imposed on the use of Naled at that time. According to the CDPR, the SLN has been reevaluated and is compliant with the reregistration of Naled. The reregistration report for Naled has been included in the data base for the MAT program.

Comment:

Santa Barbara citizens are concerned about their health and the environment. Please take our concerns seriously.

Response:

The Department concurs with this comment.

Comment:

Please eliminate the use of Naled in Santa Barbara. It causes respiratory distress, it may send people to the hospital and it may even cause the death of someone with severely compromised lungs. Please use a less toxic alternative. I am one of the many with lungs that cannot tolerate irritants, much less toxic chemicals.

Response:

This comment is outside the scope of this rulemaking.

Comment:

"COST IMPACT ON AFFECTED PRIVATE PERSON OR BUSINESSES. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action." There were a significant number of persons affected by the Naled applications, including a friend of mine. Naled is a highly potent neurotoxin that damages one's entire endocrine system if one is exposed to a significant amount. If it is so "harmless", then why was it applied without any public notification? Neurotoxins are responsible for a host of serious health problems. Multiple Sclerosis has been linked to exposure to neurotoxins. I don't see any reason to expose ourselves unnecessarily to a harmful chemical for the sake of killing a fruit fly. There are cheaper, safer and more effective means of controlling pests that were not even considered and that is an abomination.

Response:

The Department is still not aware of any costs that a private person would have to incur to be in compliance with the regulation. The remainder of this comment is outside the scope of this rulemaking.

Comment:

I do not have children, but even the idea of spraying a harmful chemical near or around a school playground seems unbelievably reckless and thoughtless. Toxins take time to work their way into our nervous system by being stored in our fatty tissue. A child's exposure is about 10x more harmful than the average adult. Certainly the time, energy and money spent on concerned citizens having to alert other parents to this Naled application (since the state and city neglected to do so) is something to consider. Citizens should feel protected by their government rather than having to constantly remind them of their rights and of basic human decency. I would argue that many are profiting from the use of Naled and it is certainly no one in our community.

Response:

This comment is outside the scope of this rulemaking.

Comment:

We do not live in the central valley. Many people who do understand that lower housing costs have a great deal to do with the fact that there is potent chemical crop dusting happening at regular intervals. I think crop dusting is inexcusable no matter where it is occurring, and that no human being should be exposed to those kinds of chemicals for the sake of agriculture. On a more fiscal note, Santa Barbara is not a primary producer of the state's agriculture, therefore there is no rational reason to be using Naled or to have an eradication zone in the first place. What will happen over time is enough concerned citizens will be constantly warning the inhabitants of Santa Barbara about the harmful effects of this chemical. Women wanting to get pregnant will be concerned about having babies here after learning that Naled is a reproductive toxicant (please review [www.scorecard.org/health-effects/explanation.tcl?short\\_hazard\\_name=repro](http://www.scorecard.org/health-effects/explanation.tcl?short_hazard_name=repro)). This will ultimately affect housing costs by lowering the value of home appreciation, which is of great concern to the wealthier members of our community.

Response:

This comment is outside the scope of this rulemaking.

Comment:

First, let us look at who is making money off of using a chemical like Naled. It is no secret

that these State mandates are basically the result of bribery by the Amvac Corp. Lawmakers are happy to make some extra cash, regardless of the risk to our communities. What will happen with farmers using it, over time, is that their employees in the fields will gradually lose movement in their joints and limbs, as the premature onset of all neurological disorders, and more of these employees will be diagnosed with cancers. It is a known fact that the highly sprayed agricultural areas like the central valley have 6X the rate of cancer as the rest of the state. Santa Barbara is soon to join those ranks if we aren't careful and that will cost everyone a great deal. Read Toxic Nation. If you don't believe cancer or other serious diseases are a costly proposition, then I don't know how to convince you.

Response:

This comment is outside the scope of this rulemaking.

Comment:

I definitely do not believe that the safest and even more effective option was even considered. I do not think that the USDA is particularly careful or even concerned about human health. USDA "organic" not as stringent in its criteria as the CCOF, for example (the Certified California Organic Farmers) which undermines State rights to control what "organic" produce enters California or that is produced in California. This has a serious financial effect on our local farmers who are trying to meet the needs of Santa Barbarans, principally. It is more costly for them to have to sell their produce outside of the city or the state simply because they have greater competition from USDA "Organic" produce. Over the long term, the use of harmful chemicals ruins the topsoil, and many of our farmers would like to see growing food as a lifelong career. We owe it to our State to consider the safest alternatives for everyone involved. Please consider the health and safety of your constituents. These are not unrealistic or uninformed comments you have been receiving. We are concerned citizens protecting our right to health, which should be made an amendment in the Constitution.

Response:

The Department does not concur with the majority of this comment which is outside the scope of this rulemaking. The proposed regulations do not deal with organic farming or the USDA. The Department concurs with the comment that it should consider the health and safety of our constituents and reaffirms that it in fact does so.

Comment:

We were stunned when you used the class 1 organo-phosphate Naled in residential areas on five occasions here in the summer. My husband suffers from severe lung disease and is on oxygen 24/7 (he never smoked). He must be protected at all costs against all and any toxic air pollutants, as must all the residents of our county. There are safer alternatives that can be used. The eradication proposal should be amended to ban the use of Naled or similar organo-phosphates, per state agricultural safety guidelines already in place that apparently your department sees fit to ignore in this case.

Response:

The Department does not concur with the majority of this comment which is outside the scope of this rulemaking. The Department concurs that those individuals with specific health concerns need to follow their physician's directions.

Comment:

I write to strongly object to making Santa Barbara a place where chemicals are used on a routine basis to eradicate pests. Please search for safer alternatives. Pests will soon adapt and I am afraid stronger and stronger substances will be released into the environment to the detriment of human, animal, and ecological health.

Response:

This comment is outside the scope of this rulemaking. However, the Department is hopeful that there will not be another need for an Oriental fruit fly eradication project in Santa Barbara.

Comment:

The CDFA currently has viable options to Naled and other organophosphates. It must use them. As an affected citizen who got sick during the first round of spraying, I request CDFA use a less toxic alternative that has been proved to work against fruit fly in other areas such as Hawaii.

Response:

This comment is outside the scope of this rulemaking. However, at this time the Department believes the program's operational procedures are safe and it is not aware of any "safer"

methods that can be used to eradicate Oriental fruit fly which would be effective and are registered for such use in California.

Comment:

I have three young children and am completely opposed to the use of organophosphate pesticide or other pesticides potentially harmful to people, plants and animals. According to Santa Barbara School Board member Susan Epstein, there are at least 30 area schools within the boundaries of the affected area. Pesticide Use in Residential areas has proven ineffective on oriental Fruit Flies and toxic to people, plants and animals. Hawaii started an eradication process in order to stem the Oriental Fruit Fly, fifty years ago. They found that the Dibrom/Naled, they had used for years, intending "eradication", did not achieve the desired results. For the last number of years they have changed their protocol as regards this harmful tier one organophosphate pesticide, and incorporated safer methods. As a result they have lessened their problem, achieved more results, and are enthusiastic about continuing in this manner. Please stop the application of Naled in favor of techniques using bait stations and less toxic, natural pesticides (spinosad) for male annihilation. The least toxic approach is the release of predatory wasps, which has also been used in Hawaii, and has been shown to work well in combination with the spinosad.

Response:

This comment is outside the scope of this rulemaking. The Department does not concur that using the male annihilation technique in residential areas has been proven ineffective against Oriental fruit fly. The Department's experience using this technique has been 100% successful.

Comment:

When you stated "no other organisms including people are harmed by the applications" you are misinformed. That was the whole reason we are speaking out- people are getting sick. The CDFA can deny that there are any links to Naled exposure and respiratory and gastrointestinal distress, but the fact remains that people have become ill immediately following applications in their neighborhoods. Furthermore, when you state that this treatment is "environmentally sound" that is just greenwash. Methyl eugenol is not

environmentally sound no matter how you look at it. It is a Pesticide Action Network "Bad Actor", meaning that it can cause reproductive harm and is a possible carcinogen. When you state "As conducted, this program is safe to use in an urban setting and has no impact on non-target organisms", I wondered what is your source for this information. It is latent in the environment and washed into watersheds and the oceans. Organophosphates are the main cause of the decline of amphibian populations in our waterways. Does the CDFA intend to conduct a study to determine if in fact methyl eugenol has entered our waterways?

Response:

This comment is outside the scope of this rulemaking.

Comment:

Nobody wants an infestation of the OFF. I certainly do not want it. However, the CDFA has been negligent in notifying the public. The local neighborhoods that are scheduled to be sprayed have not been notified nor warned. The least the CDFA could do is to let local neighborhoods know where and when the spraying will take place. Then they can board up their windows and leave town for a week while the naled off-gasses.

Response:

This comment is outside the scope of this rulemaking.

Comment:

If the "CDFA is committed to implementing safer more effective new methods and materials whenever they become developed, or made available for use", then why are they not testing alternative eradication measures in our area? Monitoring stations can be installed to determine if the OFF is declining under certain treatments. It seems like a good opportunity to test a new method, without risking wholesale infestation.

Response:

This comment is outside the scope of this rulemaking.

Comment:

I am writing regarding the recent Naled sprayings in Santa Barbara and the very negative impact it had on my family. I would like to request that should Santa Barbara County be deemed a permanent eradication zone a less toxic means of eradicating the Oriental Fruit Fly



be used. My family and I live at the end of Puente Drive, which lies adjacent to Hope Ranch where the three fruit flies were found. At the end of August 2006, after a recent spraying which was very concentrated in my neighborhood, my usually very healthy 2.5 year old daughter exhibited some very strange symptoms that I could not figure out. Over the course of a week, she vomited a couple of times, had some head cold symptoms and had a fever that came and went. These symptoms did not follow any normal progression of a common cold or allergies. My concern about her health sharply rose when at the end of the week, she developed hives all over her body. Thankfully, they cleared up within 3 days but then she developed a serious rash on her leg which we are still treating today, 2 months later. During this week of symptoms, it should be noted that it was foggy for the first time since the sprayings, which in my understanding, causes dichlorvos, a very harmful byproduct of Naled, to be released into the air. I became aware of the Naled sprayings when I saw a sign posted in my neighborhood. I learned that several other families and animals had been adversely affected by the sprayings. I took my daughter to see her pediatrician and she agreed that it was strongly possible that my daughter was having a reaction to the Naled sprayings, especially since organophosphates/dichlorvos have been proven to be extremely harmful to human health. We could not prove that the Naled caused all of these symptoms but I was extremely concerned that my small daughter was being exposed to some very carcinogenic compounds. I knew several people in my area who also had unusual symptoms. My pediatrician recommended that we leave town during the next spraying which we did. We incurred many costs as my husband took time off work, my daughter missed daycare for a week and we paid for a hotel and meals out. It caused undue stress on all of us as we felt like refugees from our home without any control over our environment. We were shocked that we had possibly been poisoned without due notification especially in California which we have always felt valued a healthful environment. The needs of State Agriculture to kill the fruit fly seemed to supersede concern for human health. I understand that the Oriental Fruit Fly must be dealt with. I also understand that use of Naled in Hawaii was unsuccessful. I understand that there are less toxic means that eradicate the fruit fly. I plead with you and all of those in charge to find an alternative to using Naled in the future here or anywhere else. I urge leaders to do more in depth studies on the negative side effects so there is no temptation to use it again. There must be a very good reason that Canada and Europe have

banned the substance. Finally, I urge that there be public notification next time there is an eradication plan so residents can take necessary precautions.

Response:

This comment is outside the scope of this rulemaking. However, the Department concurs that there be public notification regarding eradication projects.

Comment:

The Use of Naled and Other Toxic Compounds in Residential Areas. Please listen, for I am speaking for all the people of Santa Barbara, especially the children. Although there are many troublesome insects, fungi, and other challenges we have to deal with, it would be prudent to remember the days of DDT before creating a "Permanent Eradication Zone". It was not that long ago when many government experts explained the modern "miracle" of DDT: the easy eradication of mosquitoes, flies, and other insect pests. Yes, it was widely heralded as a wondrous breakthrough. But as we all know now, it also killed a great many birds (& beneficial insects, small animals, etc.), and we almost destroyed the Bald Eagle, the symbol of the American spirit. The eagle population is still recovering from that shortsighted mistake. Sometimes the easy fix creates much greater problems later. Please, let's not use toxic compounds where people and pets (and livestock; and wildlife) are living. As a footnote, please consider the potential of costly litigation that could arise from the use of Naled and similar chemicals and the potential of watershed contamination.

Response:

This comment is outside the scope of this rulemaking.

Comment:

I am Dr. James R. Heitz, Professor Emeritus of Biochemistry and Molecular Biology at Mississippi State University. I understand that California has recently suffered an outbreak of Oriental Fruit Flies, *Bacterocera dorsalis*, and has treated this problem with Naled, an organophosphate nerve poison, in conjunction with methyl eugenol, an attractant. I also understand that the CDFA is unaware of any comparable active ingredient to control the Oriental Fruit Fly. I would like to inform you of an active ingredient that is quite effective against Fruit Flies in general. Phloxine B is a phosphorescent red dye used in foods and cosmetics for humans that is also active as an insecticide. It is safe for humans and kills

insects due to the biochemical and physiological differences between the two. I co edited a book (ISBN 0-8412-3334-9) with Dr. Kelsey Downum of Florida International University which was the result of an American Chemical Society Symposium held in Anaheim, CA in 1995. In this book are 2 chapters by Liquido, McQuate, and Cunningham from the ARS lab in Hilo, HA and 2 chapters by Mangan and Moreno from the ARS lab in Weslaco, TX describing treatments of various Fruit Flies using the dyes. Also, in the book is a chapter by Bergsten from the ARS in Beltsville, MD on safety and one by Bergsten of the FDA in Washington, DC on safety from the FDA perspective. Field trials have been done under the auspices of the USDA in Hawaii, California, Guatemala, Texas, and Florida. I was personally present at the trials in California and Florida. The dyes were very comparable to the organophosphate nerve poisons in all of these trials. Phloxine B is known by the FDA as D&C Red 27 and 28. On Page 7 of my chapter in the above referenced book I show the calculations that indicate that Phloxine B is 100,000 times safer than Malathion. The coloring agent in Peptobismol is phloxine B. You will consume more Phloxine B in one tablespoon of Peptobismol than all the oranges you can eat from an orchard sprayed by the Mesotherm-Phloxine B bait. I would be most happy to talk with anyone about the dye approach to insect control. But it appears that the regulatory agencies charged with protecting the agriculture sector are quite happy with the organophosphate nerve poisons. That sets up a classic "Catch-22." Nothing new is available because nothing new is developed. It is unfortunate that every time a new Fruit Fly introduction appears, the regulatory agencies trot out an organophosphate because there is nothing else to use and the citizenry gets upset because they don't want to be sprayed with that material. It would be great if both sides got together during the "off season" when no outbreak is evident in order to develop a new approach. If not phloxine B, then try Spinosad or parasitic wasps or something else. But don't wait 4 years or more and go through this all over again. Copies of the Chapters along with this letter will be presented at the hearing in Santa Barbara.

Response:

This comment is outside the scope of this rulemaking. It should be noted there is a Science Advisory Panel (SAP) comprised of experts in the field and its role is to provide expert scientific program evaluation and advice on the biological soundness of program activities. The SAP advises the Department on program effectiveness, possible available alternative

eradication strategies and this is based on the scientific knowledge of SAP members on the biologies of the pests.

Comment:

This to me is another example of a governmental agency trampling over the rights and concerns of people who wish to take responsibility for their health and that of their children and families. Apparently, any interest in the welfare of the population is non-existent, if it is counter to what the agency chooses to do. It is unconscionable to me that any toxic chemicals are used on our already very polluted earth, when there are safer alternatives. Whether you are dropping the poison from the sky or whether it simply falls on the residents from the trees, it is still a toxic substance. The fact that you gave no warning to the neighboring areas that a toxic substance was to be dumped all over their environment is criminal negligence in my mind. A warning was the very LEAST you could have done--and a warning given at a reasonable time in advance to allow the elderly, the sick, the young, and any others with bad allergies to toxins, or fears about their dangers, to remove ourselves from the neighborhood if it was desired. Or, in lieu of that, a warning that would have allowed people to close their doors and windows, keep their children and pets inside, and take whatever other measures they deemed appropriate. When large numbers of affected people protest, when the mayor of the city and others in governmental positions protest about what is happening in OUR neighborhood and OUR town, these concerns should been addressed and considered VERY seriously. And this violation of our rights didn't even stop with one spraying, but continued for THREE sprayings!! A number of us became extremely ill during the time of these sprayings and the symptoms were very similar. Coincidence? Not very likely. It's about time that your agency begin to take responsibility for and show concern for the health and welfare of the citizens of your state. This type of "poisoning" of the populace much END!!

Response:

This comment is outside the scope of this rulemaking.

Comment:

I'm angry that my trees have been sprayed with Naled to stop the Oriental Fruit Fly in Santa Barbara! My oak tree (located on my private property) was sprayed as evidenced by a giant dried blob of a dripping substance. The oak tree is directly next to my chicken coop. We eat

the eggs from our chickens. Not only are my farm animals exposed to this neurotoxin, a mutagen that is cumulative in the system but we are exposed to it in our food as well. I was not properly notified before the third spraying about our involuntary exposure to this neurotoxin! I experienced unexplained headaches for the month of August. My dog had to go in for more testing to find the origin of his recent digestive disorder! My high school daughter who runs for the San Marcos High School cross country team has been running daily in my neighborhood where the application of this toxic pesticide has been liberally applied the most! It all makes sense now why my family has been experiencing these physical problems which are classic symptoms of Naled poisoning. We are an organic family and never use pesticides of any kind on or around our property. Now we are forced against our will to inhale, ingest, and live with this toxin. When is this poisoning going to stop? When are we going to learn that the chemicals we are putting into the environment that are supposed to protect us are actually killing us? Why are we not using a safer, more benign options to Naled use against the Oriental Fruit Fly such as Spinosad? Spinosad doesn't wipe out our allies, the beneficials, like bees, birds, and aquatic life. Naled has potential for acute and chronic risks to freshwater and estuarine invertebrates, according to the EPA.

Response:

This comment is outside the scope of this rulemaking.

Comment:

I am writing to inform you of the horrible side effects that my son experienced during the applications of Naled near my home in Hope Ranch. After several years of being asthma free, all of his symptoms came back and we had to seek medical help. My little boy is only seven years old and should not be exposed to such harmful toxins. His best friend, who had never had any asthma symptoms, became very ill with phenomena and sever asthma. I also experienced increased asthma. Please explore other non toxic alternatives to eradicating the fruit fly.

Response:

This comment is outside the scope of this rulemaking.

Comment:

I am writing to inform you of the horrible symptoms I experienced during the applications of Naled near my home in Hope Ranch. My eyes were burning and I became very ill. I was

leaving to go to England the next day and almost had to postpone my trip due to the effects of the Naled spraying. I have never experienced these symptoms before the spraying. Please explore other non toxic alternatives to eradicating the fruit fly.

Response:

This comment is outside the scope of this rulemaking.

Comment:

The recent applications of Naled, an organophosphate and neurotoxin, over a residential area of Santa Barbara (which included 30 schools and uncounted elder and day care facilities) was an event of great concern for myself and for my community. We have, as a community, united to use Integrated Pest Management strategies to maintain our parks, schools, and municipal properties. These freedoms from toxics were hard-won, after years of City Council meetings and public events. We understand the need to protect our valuable state agriculture from the threats posed by the Oriental Fruit Fly, but we also understand that there are less hazardous methods of eradication and control, that are equally effective, than Highest Hazard Naled. Being as it is currently under consideration to make Santa Barbara a permanent eradication zone for the OFF, it seems therefore urgent that measures be taken, within that eradication zone document, to ensure that another event like the one just experienced in Santa Barbara, with pesticide-related illnesses, disruption of citizen's lives, children held out of school, and protests, be avoided. This could be handled by an agreement to use least-toxic methods first, as well as thorough public health risk assessments, and a high priority on public notification. It's amazing what can be accomplished with communication, and this last event here has illustrated the deep rifts caused when it is dropped out.

Response:

This comment is outside the scope of this rulemaking.

Comment:

It seems likely that the Oriental Fruit Fly will be an ongoing pest threatening California agriculture, as it has been for decades. It also seems wise then to consider the long-term effects of what will most certainly be an ongoing program, effecting residents of the state on into the future. Effective alternatives to highest hazard pesticides exist, and are available.

Their use will only increase the value of state agriculture, as the organic market continues to rise dramatically.

Response:

The Department concurs that it is likely that the Oriental Fruit Fly will be an ongoing pest threatening California agriculture. The remainder of this comment is outside the scope of this rulemaking.

Comment:

The community of Santa Barbara is proud to include among us a number of global experts on pesticide alternatives. We would be happy to share any pertinent information with your offices, and to act in partnership against the Oriental Fruit Fly.

Response:

This comment is outside the scope of this rulemaking.

Comment:

As an international journalist, I will be submitting information on the progress implemented here to inform the community around the world, in dealing with similar issues. I serve as US West Coast Correspondent for *El Mundo*, Spain's second largest national newspaper, and own an agency that provides articles to journals, magazines and newspapers in 20 countries. I trust that with cooperation California will continue to provide the world with environmental leadership.

Response:

This comment is outside the scope of this rulemaking.

Comment:

Organophosphates, like Naled, are the 2nd class of insecticides and have been used for several decades. The first OP insecticide was introduced in 1946, just 2 years after DDT. OP insecticides have been associated with more human poisonings than any other pesticide. They are closely related to some of the most potent nerve gases developed for use as chemical weapons. According to Toxics A to Z, written by four prominent biologists and ecologists, "the OP's interfere with the normal function of the nervous system in a complex way. They severely affect the respiratory and circulatory systems, causing

muscular twitching and paralysis. Basically, the OPs block the activity of cholinesterase, an enzyme that plays a crucial role in the transmission of nerve signals. Each signal is carried from one nerve fiber to another by a chemical transmitter that must be broken down. Normally, cholinesterase breaks down the transmitter, thus keeping the circuits clear. When the enzyme is hindered, as occurs when an organophosphate insecticide becomes bound to the enzyme, the chemical accumulates at the junction of nerve fibers. As a result, certain target organs, such as the heart, are subjected to continuous stimulation, which may cause muscular twitching, paralysis, or death, depending on dosage and treatment. Because the bond between the organophosphate and the enzyme is relatively strong, the inhibitory effects are very slowly reversed and may persist for as long as a week."

Response:

This comment is outside the scope of this rulemaking.

Comment:

I know at least two people personally who have been affected by the Naled applications (persons who live in the target zones) and have spoken to numerous others who know or have personally experienced symptoms similar to the symptoms just described. To me, this is cause for concern. The legal loopholes around using Organophosphates is that they supposedly disperse into the atmosphere and dissipate before they have any lasting effects. This argument, of course, is entirely subject to the amount of the material applied and to the relative amount of exposure to humans and surrounding wildlife. The problem with this loophole is that it supports the rights of corporations who manufacture these chemicals and does not support the rights of the individuals who might be adversely affected by exposure. The fruit fly is a pest not easily ignored, but let us now consider (after the health and safety of our community), whether or not using Naled is actually effective enough to solve the problem. When a large agricultural area is sprayed, many of the targeted pests are killed - but not all of them. Those that survive have built up a genetic resistance and are able to grow to ever greater populations than before, thus putting the farmer on the pesticide treadmill. It becomes a vicious cycle of killing rather than creating balance. The biggest part of the problem is that prevailing agricultural systems are designed to upset the natural balance of organisms. Most of the crops grown in the US are single, intentionally uniform crops, or monocultures, on large plots of land. This method creates a breeding ground for



one pervasive pest, increasing its level of destructiveness. Compared to, for example, a diverse crop culture with a variety of species where more competitive and predatory insects can flourish and create a natural balance of power among the insect populations. IPM is a useful way of dealing with the situation, but I think the solution begins first with understanding nature a bit better and not using such destructive farming methods.

Response:

This comment is outside the scope of this rulemaking.

Comment:

One of the reasons why California is continually troubled by the fruit fly is not only because of our warm, Mediterranean climate, but also because we import massive quantities of fruits and vegetables from other countries. We supposedly have fairly stringent agricultural quarantines, but there is no way to monitor every piece of fruit we receive from Mexico or even Spain. If we had more organic, crop diversity in our state, we would have less of a need for outside sources and would ultimately be more self-sufficient. After all - California is one of the top producers of agricultural products in the US. Given this fact, there's no justifiable reason why we should be importing agriculture at all. If we were nurturing the soil through compost, crop diversity and mycorrhizal supplementation (which is far cheaper than the cost of billions of gallons per year of various pesticides), then our crops would be stronger and more resistant to insect invasions. Just as we humans can easily fight off infection and viruses by maintaining healthy immune systems, so can nature. Only when we start farming and dealing with nature more intelligently can we get off of this pesticide treadmill that isn't solving anything except running in place. Continuing the current practice of excessive pesticide use is only waging a war against ourselves - one that might cause irrevocable damage.

Response:

This comment is outside the scope of this rulemaking.

Comment:

1. We are requesting the CDFA give equal concern and protection to the public.
2. We are requesting that the CDFA use safer alternatives to pest eradication.
3. We are requesting that the CDFA adhere to their own mission statement.

4. We are requesting that the eradication proposal be amended to eliminate the use of NALED (and other organo-phosphates) as per the CDFA's own requirements (and the warnings of the manufacturer).

Response:

This comment is outside the scope of this rulemaking. However, the Department does give equal concern and protection to the public and adheres to its mission statement. The Department does not have its own requirements regarding eliminating the use of Naled.

Comment:

Following is a reply to a response that I received from a CDFA employee to my concerns regarding the application of Naled in our community. When you stated "no other organisms including people are harmed by the applications" you are misinformed. That is the whole reason we are speaking out- people are getting sick. The CDFA can deny that there are any links to Naled exposure and respiratory and gastrointestinal distress, but the fact remains that people have become ill immediately following applications in their neighborhoods. Furthermore, when you state that this treatment is "environmentally sound" that is just greenwash. Methyl eugenol is not environmentally sound no matter how you look at it. It is a Pesticide Action Network "Bad Actor", meaning that it can cause reproductive harm and is a possible carcinogen. When you state "As conducted, this program is safe to use in an urban setting and has no impact on non-target organisms", I wondered what is your source for this information. It is latent in the environment and washed into watersheds and the oceans. Organophosphates are the main cause of the decline of amphibian populations in our waterways. Does the CDFA intend to conduct a study to determine if in fact methyl eugenol has entered our waterways? Nobody wants an infestation of the OFF. I certainly do not want it. However, the CDFA has been negligent in notifying the public. The local neighborhoods that are scheduled to be sprayed have not been notified nor warned. The least the CDFA could do is to let local neighborhoods know where and when the spraying will take place. Then they can board up their windows and leave town for a week while the naled off-gasses. If the "CDFA is committed to implementing safer more effective new methods and materials whenever they become developed, or made available for use", then why are they not testing alternative eradication measures in our area? Monitoring stations can be installed

to determine if the OFF is declining under certain treatments. It seems like a good opportunity to test a new method, without risking wholesale infestation.

Response:

This comment is outside the scope of this rulemaking.

Comment:

I am writing to let you know that the application of Naled to trees around my home and my son's school was heavily burdensome to me and my family. My son plays on the school playground below where three oak trees were sprayed on Vieja Drive. These trees were releasing dichlorvos via your timed-release process. My son became very ill with difficulty breathing and coughing literally every second. In the end, after I consulted two doctors, the only thing that would help him was leaving the area. I had to go and live with my brother in Santa Rosa until two weeks after the last application of Naled. The cost was high to us emotionally, as my son missed school, I had to withdraw from my classes at Santa Barbara City College, falling behind a semester, and my son missed his sports games. I also missed the support of my husband, who had to remain behind for work, and our friends. It cost us financially too, as we spent money on gas, hotel costs, and replacement of belongings we needed. We also suffered the stress of having this done to us without any notification or any discussion. We felt powerless. Lastly, we face the fear of what the long-term consequences of this toxin might be, especially since no human health assessment has been carried out to test the applications the CDFA so freely performed on our neighborhood. If any more fruit flies are found in our neighborhood, we ask that the CDFA be prepared with a less-toxic means of treating the outbreak, because the cost and burden of Naled treatments is not acceptable.

Response:

The Department does not concur with the comment that there was no notification. The balance of this comment is outside the scope of this rulemaking.

Mandate on Local Agencies and School Districts

The Department of Food and Agriculture has determined that Section 3591.2 does not impose a new mandate on local agencies or school districts. The amendment of this regulation, establishing State eradication authority in Santa Barbara County, does not

impose a new mandate on the local agencies. Therefore, no reimbursement is required for Section 3591.2 under Section 17561 of the Government Code.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

The cost impact of the changes in the regulations on a representative private person or business is not expected to be significantly adverse. The Department has also determined that this action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states.

#### Assessment

The Department has made an assessment that this amendment to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

#### Alternatives Considered

The Department of Food and Agriculture has determined that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.